No. 1323

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,

Plaintiff in Error,

vs.

J. A. MOORE,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division.

THE FILMER BROS. CO. PRINT, 424 SANSOME ST., S. F.

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INDEX.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs.
J. A. MOORE,
Defendant.
No. 1128.

Amended Complaint.

Plaintiff complains and alleges, for a first cause of action:

I.

That the plaintiff now is and was at all the times hereinafter mentioned, a banking association duly organized, created and existing under and by virtue of the banking laws of the United States of America, having its office and place of business at Council Bluffs, in the State of Iowa, and is and was at all times hereinafter mentioned a citizen and inhabitant of the State of Iowa.

II.

That the Citizens' State Bank of Council Bluffs, Iowa, was, at the dates hereinafter mentioned, a corporation duly organized, created and existing under and by virtue of the laws of the State of Iowa, having its office and place of business in the State of Iowa, and was at all times hereinafter mentioned a citizen and inhabitant of the State of Iowa.

III.

That the defendant, J. A. Moore, is now a citizen and resident of the State of Washington.

IV.

That at Council Bluffs, Iowa, on the 2d day of January, 1897, the defendant, J. A. Moore, for value received, made, executed and delivered to the Citizens' State Bank of Council Bluffs, Iowa, his certain promissory note, in writing, in words and figures following:

"$2500. Council Bluffs, Iowa, Jan. 2, 1897.

Six months after date, for value received, I, as principal, promise to pay to the order of the Citizens' State Bank of Council Bluffs, Iowa twenty-five hundred dollars at its office, with interest, payable semi-annually, at eight per cent per annum after date.

And if interest be not paid when due, it shall become as principal, and draw interest at the rate of eight per cent per annum, payable semi-annually. This note is payable in gold coin of the United States of America equal to the present standard of value. The makers and endorsers hereof each hereby waive presentation for payment, notice of nonpayment and protest of this note, and due diligence in bringing suit against any party thereto and sureties' consent that time of payment may be extended without notice thereof. I also agree to pay all reasonable expenses, including commissions incurred in collecting this note, and a reasonable attorney's fee, in addition, in case suit is brought thereon, the same to be taxed as costs of suit and in case of

judgment to be entered as a part of the same. It is hereby agreed that any Justice of the Peace may have jurisdiction of any suit commenced for the collection of this note, not to exceed three hundred dollars.

(Signed) J. A. MOORE."

V.

That after the maturity of said note and on or about the 31st day of December, 1899, the said Citizens' State Bank of Council Bluffs, Iowa, for value received, sold, assigned, transferred and delivered the said note to plaintiff, and the said plaintiff has ever since been and now is the owner and holder thereof and in possession thereof, and afterward, on or about the 2d day of January, 1902, in order to transfer to plaintiff the legal title to said note, said Citizens' State Bank of Council Bluffs, Iowa, made, executed and delivered to plaintiff an assignment thereof in writing, in the words and figures following, to wit:

"Council Bluffs, Iowa, Jany. 2nd, 1902.

For value received, we hereby assign to the First National Bank of Council Bluffs, Iowa, our successors, notes for $2,500.00, $2,500.00 and $800.00, signed by J. A. Moore to us, dated January 2nd, 1897, and due six months after date.

CITIZENS' STATE BANK.
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—and plaintiff thereupon became and ever since has been and now is the legal as well as the equitable holder of said note.

VI.

That no part of the sum of money mentioned in said promissory note has been paid, and the whole thereof is now due and owing.

VII.

That the defendant, J. A. Moore, at the time when said note matured and became due was not a resident of the State of Washington, nor of the State of Iowa, or an inhabitant therein, or to be found therein, and that since the maturity of said note and less than six years prior to September 21, 1903, the said defendant, J. A. Moore, came into and moved to and became a resident of the State of Washington, and has been a resident to the State of Washington for less than six years prior to the commencement of this action.

VIII.

That after the making of said note, the said defendant, J. A. Moore, prior to the 2d day of July, 1903, by writing signed by him, acknowledged the indebtedness of said note and obligation thereof, and offered and promised to pay the same.

IX.

That the sum of four hundred dollars ($400.00), is a reasonable attorney's fee to be allowed the plaintiff in this action, upon this cause of action.

Plaintiff complains and alleges for a second cause of action:

I.

That the plaintiff is now and was at all times hereinafter mentioned a banking association duly organized

created and existing under and by virtue of the banking laws of the United States of America having its office and place of business at Council Bluffs, in the State of Iowa, and is and was at all times hereinafter mentioned, a citizen and inhabitant of the State of Iowa.

II.

That the Citizens' State Bank of Council Bluffs, Iowa, was, at the dates hereinafter mentioned, a corporation, duly organized, created and existing under and by virtue of the laws of the State of Iowa, having its office and place of business in the State of Iowa, and was at all times hereinafter mentioned, a citizen and inhabitant of the State of Iowa.

III.

That the defendant, J. A. Moore, is now a citizen and resident of the State of Washington.

IV.

That at Council Bluffs, Iowa, on the 2d day of January, 1897 the defendant, J. A. Moore, for value received, made executed and delivered to the Citizens' State Bank of Council, Iowa, his certain promissory note, in writing, in words and figures following:

"$2,500. Council Bluffs, Iowa, Jan. 2, 1897.

Six months after date, for value received, I, as principal, promise to pay to the order of the Citizens' State Bank of Council Bluffs, Iowa, twenty-five hundred dollars, at its office, with interest, payable semi-annually, at eight per cent per annum after date.

And if interest be not paid when due, it shall become as principal, and draw interest at the rate of eight per cent per annum, payable semi-annually. This note is payable in gold coin of the United States of America, equal to the present standard of value. The makers and endorsers hereof each hereby waive presentation for payment, notice of nonpayment and protest of this note, and due diligence in bringing suit against any party thereto and sureties' consent that time of payment may be extended without notice thereof. I also agree to pay all reasonable expenses, including commissions incurred in collecting this note, and a reasonable attorney's fee in addition, in case suit is brought hereon, the same to be taxed as costs of suit, and in case of judgment to be entered as a part of the same. It is hereby agreed that any Justice of the peace may have jurisdiction of any suit commenced for the collection of this note, not to exceed three hundred dollars.

(Signed) J. A. MOORE."

V.

That after the maturity of said note, and on or about the 31st day of December, 1899, the said Citizens' State Bank of Council Bluffs, Iowa, for value received, sold, assigned, transferred and delivered the said note to plaintiff, and the said plaintiff has ever since been and now is the owner and holder thereof and in possession thereof, and afterward, on or about the 2d day of January, 1902, in order to transfer to plaintiff the legal title to said note, the said Citizens' State Bank of Council Bluffs, Iowa, made executed and delivered to plaintiff

an assignment thereof, in writing, in the words and figures following, to wit:

"Council Bluffs, Iowa, Jany. 2d, 1902.

For value received we hereby assign to the First National Bank of Council Bluffs, Iowa, our successors, notes for $2,500.00, $2,500.00 and $800.00, signed by J. A. Moore to us, dated January 2nd, 1897, and due six months after date.

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By CHARLES R. HANNAN, Cas.
T."

—and plaintiff thereupon became and ever since has been and now is the legal as well as the equitable holder of said note.

VI.

That no part of the sum of money mentioned in said promissory note has been paid, and the whole thereof is now due and owing.

VII.

That the defendant, J. A. Moore, at the time when said note matured and became due was not a resident of the State of Washington, nor the State of Iowa, or an inhabitant therein, or to be found therein, and that since the maturity of said note and less than six years prior to September 21, 1903, the said defendant, J. A. Moore, came into and moved to and became a resident of the State of Washington, and has been a resident of the State of Washington for less than six years prior to the commencement of this action.

VIII.

That after the making of said note, the said defendant, J. A. Moore, prior to the 2d day of July 1903, by writing signed by him, acknowledged the indebtedness of said note and the obligation thereof, and offered and promised to pay the same.

IX.

That the sum of four hundred dollars ($400.00), is a reasonable attorney's fee to be allowed the plaintiff in this action, upon this cause of action.

Plaintiff complains and alleges for a third cause of action:

I.

That the plaintiff is now and was, at all times hereinafter mentioned, a banking association, duly organized, created and existing under and by virtue of the banking laws of the United States of America, having its office and place of business at Council Bluffs, Iowa, and is and was at all times hereinafter mentioned, a citizen and inhabitant of the State of Iowa.

II.

That the Citizens' State Bank of Council Bluffs, Iowa, was, at the dates hereinafter mentioned, a corporation duly organized, created and existing under and by virtue of the laws of the State of Iowa, having its office and place of business in the State of Iowa, and was at all times hereinafter mentioned a citizen and inhabitant of the State of Iowa.

III.

That defendant, J. A. Moore, is now a citizen and resident of the State of Washington.

IV.

That at Council Bluffs, Iowa, on the 2d day of January, 1897, the defendant, J. A. Moore, for value received, made, executed and delivered to the Citizens State Bank of Council Bluffs, Iowa, his certain promissory note, in writing, in words and figures following:

"800. Council Bluffs, Iowa, Jan. 2, 1897.

Six months after date, for value received, I, as principal, promise to pay to the order of the Citizens' State Bank of Council Bluffs, Iowa, eight hundred dollars, at its office, with interest, payable semi-annually, at eight per cent per annum after date.

And if interest be not paid when due, it shall become as principal, and draw interest at the rate of eight per cent per annum, payable semi-annually. This note is payable in gold coin of the United States of America equal to the present standard of value. The makers and endorsers hereof each hereby waive presentation for payment, notice of nonpayment and protest of this note and due diligence in bringing suit against any party thereto and sureties' consent that time of payment may be extended without notice thereof. I also agree to pay all reasonable expenses, including commissions incurred in collecting this note, and a reasonable attorney's fee in addition, in case suit is brought thereon, the same to be taxed as costs of suit, and in case of judg-

ment to be entered as a part of the same. It is hereby agreed that any Justice of the Peace may have jurisdiction of any suit commenced for the collection of this note, not to exceed three hundred dollars.

(Signed) J. A. MOORE."

V.

That after the maturity of said note and on or about the 31st day of December 1899, the said Citizens' State Bank of Council Bluffs, Iowa, for value received, sold, assigned, transferred and delivered the said note to plaintiff, and said plaintiff has ever since been and now is the owner and holder thereof and in possession thereof, and afterward, on or about the 2d day of January, 1902, in order to transfer to plaintiff the legal title to said note, the said Citizens' State Bank of Council Bluffs, Iowa, made, executed and delivered to plaintiff an assignment thereof, in writing, in the words and figures following, to wit:

"Council Bluffs, Iowa, Jany. 2d, 1902.

For value received, we hereby assign to the First National Bank of Council Bluffs, Iowa, our successors, notes for $2,500.00, $2,500.00 and $800.00, signed by J. A. Moore to us, dated January 2nd, 1897, and due six months after date.

CITIZENS' STATE BANK.

By CHARLES R. HANNAN, Cas.

T."

—and plaintiff thereupon became and ever since has been and now is the legal as well as the equitable holder of said note.

VI.

That no part of the sum of money mentioned in said promissory note has been paid, and the whole thereof is now due and owing.

VII.

That the defendant, J. A. Moore, at the time when said note matured and became due, was not a resident of the State of Washington, nor of the State of Iowa, or an inhabitant therein, or to be found therein, and that since the maturity of said note and less than six years prior to September 21, 1903, the defendant, J. A. Moore, came into and moved to and became a resident of the State of Washington, and has been a resident of the State of Washington for less than six years prior to the commencement of this action.

VIII.

That after the making of said note, the said defendant, J. A. Moore, prior to the 2d day of July, 1903, by writing, signed by him, acknowledged the indebtedness of said note and the obligation thereof, and offered and promised to pay the same.

IX.

That the sum of two hundred dollars ($200.00) is a reasonable attorney's fee to be allowed the plaintiff in this action, upon this cause of action.

Wherefore, plaintiff demands judgment against the defendant for the sum of five thousand eight hundred dollars ($5,800.00), with interest at the rate of eight per cent per annum from January 2, 1897, to be com-

pounded, and one thousand dollars ($1,000.00) attorneys' fees and plaintiff's costs and disbursements in this action.

JAMES KIEFER and
JAMES McNENY,
Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

James Kiefer, being first duly sworn, according to law, deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true; that he makes this verification for and on behalf of the plaintiff for the reason that the plaintiff is not a resident of the State of Washington and that this action is brought upon written instruments for the payment of money only, which instruments of writing are in the possession of affiant.

JAMES KIEFER.

Subscribed and sworn to before me on this 17 day of August, 1905.

[Notary Public—Seal] JAMES H. KANE.
Notary Public in and for the State of Washington, Residing at Seattle.

Service of all papers in this cause may be made on the undersigned at 527 Colman Building, Seattle, Wash.

JAMES KIEFER.

Copy of within amended complaint received and service of same acknowledged this 17th day of August, 1905.

GEO. M. McKAY,
Atty. of Deft.

[Endorsed]: Amended Complaint. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 21, 1905. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs.
J. A. MOORE,
Defendant.
No. 1128.

Stipulation as to Pleadings.

It is hereby stipulated that the answer of the defendant, verified December 10, 1903, to the original complaint shall be taken and deemed to be the answer of the defendant to the amended complaint herein, and that the reply of the plaintiff to said answer, verified December 14, 1903, shall be amended if plaintiff elect.

JAMES KIEFER and
JAMES McNENY,
Attorneys for Plaintiff.

GEORGE McKAY,
Attorneys for Defendant.

[Endorsed]: Stipulation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 30, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States for the District of Washington, Northern Division.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA, Plaintiff,
vs.
J. A. MOORE, Defendant.
No. 1128.

Defendant's Answer.

For answers to the allegations made in the three several causes of action set forth in the plaintiff's complaint, the defendant

I.

Denies all knowledge or information sufficient to form a belief as to the allegations made in paragraph I of each of the said several causes of action.

II.

Admits the allegation made in paragraph II of each of the said several causes of action.

III.

Admits the allegations made in paragraph III of each of the said several causes of action.

IV.

Admits that he signed and delivered the several notes

set forth in paragraph IV of the said several causes of action, but he denies all the other allegations of paragraph IV of said several causes of action and in particular he denies that said several notes, or either of them were given for value received.

V.

Denies all knowledge sufficient to form a belief as to the allegations made in paragraph V of each of said several causes of action.

VI.

Admits, as alleged in paragraph VI of each of said several causes of action, that he has paid nothing on either of said notes, but denies that there is anything due on either of said notes.

VII.

Admits that he was not, at the time when the said several notes matured, a resident of the State of Iowa or an inhabitant therein or to be found therein, but he denies each and every allegation made in paragraph VII of said several causes of action, and in particular he alleges that for more than six years prior to the commencement of this action he was a resident of the State of Washington and domiciled therein.

VIII.

Denies each and every allegation made in paragraph VIII of said several causes of action.

IX.

Denies each and every allegation made in paragraph IX of said several causes of action.

First Affirmative Defense.

For a first affirmative defense to the several causes of action set forth in the plaintiff's complaint the defendant

I.

Alleges that the several notes mentioned in the several causes of action set forth in the plaintiff's complaint were not nor was either of them, at the time this action was commenced, the property of the plaintiff in this action, and that said notes are not now the property of the plaintiff on this action.

Second Affirmative Defense.

For a second affirmative defense to the several causes of action set forth in the plaintiff's complaint the defendant

I.

Alleges that the several causes of action mentioned in the plaintiff's complaint did not accrue, nor did either of said several causes of action accrue, within six years prior to the commencement of this action.

Third Affirmative Defense.

For a third affirmative defense to the several causes of action set forth in the plaintiff's complaint the defendant

I.

Alleges that George J. Crane and F. P. Bellinger are now and at all times mentioned in this suit were copartners in the business of promoting the sale of the pretended secret formula hereinafter mentioned and

that the said copartners are the owners and holders of the several notes mentioned in the plaintiff's amended complaint and of all pecuniary interest therein and were such owners before and at the time this suit was commenced.

II.

Alleges that the several notes mentioned in the several causes of action set forth in the plaintiff's amended complaint were signed by the defendant in substitution of and for a note for $5,000, given by the defendant to the said Crane and Bellinger on the —— day of March, 1893, and without waiving any defenses whatever which this defendant had or held to the note for $5,000, and that the sole and only consideration for the said last-mentioned note was the warranty, contract and agreement of the said Crane and Bellinger hereinafter set forth.

III.

Alleges that on the —— day of March, 1893, the said Crane and Bellinger warranted to the defendant and contracted and agreed with him that the said Bellinger was the author and discoverer of a secret remedy, formula, recipe or prescription for the cure of the morphine, cocaine, opium, chloral, liquor tobacco and other drug habits and the diseases and infirmities caused by the habitual use of such drugs and that said remedy, formula, recipe or prescription was a certain cure and a specific for said habits and diseases and that they, the said Crane and Bellinger, were then the owners of the said secret remedy, formula, recipe or prescription and

that they, the said Crane and Bellinger, would organize or procure to be organized a corporation, under the laws of the State of Washington, and would transfer to said corporation said remedy, formula, recipe or prescription in payment for the capital stock of said corporation and would transfer to the defendant one-fifth of said capital stock.

IV.

That on the 15th day of March, 1893, the said Crane and Bellinger procured to be organized the said corporation under the laws of the State of Washington.

V.

Alleges that in consideration of the said agreement the defendant gave the said original note; that the said Crane and Bellinger did not keep or perform their said warranty and contract; that neither of them had discovered or knew any secret or other remedy, formula, recipe or prescription for the cure of the said habits and diseases and could not and did not transfer any such remedy, formula, recipe or prescription to the said corporation and the stock of the said corporation was never of any value whatever.

VI.

Alleges that to induce the defendant to sign the notes sued upon in this action in substitution of and for the said note for $5,000, the Citizens' State Bank of Council Bluffs, Iowa, the payee in said notes, falsely represented to the defendant that it had taken said original note for $5,000, in the ordinary course of business before maturity and had paid value therefor and without

notice of any defense thereto; that in reliance on said representations and believing them to be true the defendant signed the notes sued upon in this action; that said representations were wholly false and untrue; that said plaintiff was not a bona fide holder of said original note for $5,000; that it took said note after maturity without paying any value therefor and with notice that said note was given without any consideration therefor, and was obtained by the fraud of the said Crane and Bellinger.

Fourth Affirmative Defense.

For a fourth affirmative defense to the several causes of action set forth in the plaintiff's complaint the defendant

I.

Alleges that George J. Crane and F. P. Bellinger are now and at all times mentioned in this suit were copartners in the business of promoting the sale of the pretended secret formula hereinafter mentioned and that the said copartners are the owners and holders of the several notes mentioned in the plaintiff's amended complaint and of all pecuniary interest therein and were such owners before and at the time this suit was commenced.

II.

Alleges that the several notes mentioned in the several causes of action set forth in the plaintiff's amended complaint were signed by the defendant in substitution of and for a note for $5,000 given by the defendant to the said Crane and Bellinger on the —— day of March,

1893, and without waiving any defenses whatever which this defendant had or held to the note for $5,000, and that the said last-mentioned note was obtained by the said Crane and Bellinger by the fraudulent devices, representations and pretenses hereinafter mentioned.

III.

That the sole and only consideration for the said original note for $5,000 and several notes sued upon in this action was the agreement by and between the defendant and the said Crane and Bellinger that they, the said Crane and Bellinger, would organize a corporation under the laws of the State of Washington and transfer to said corporation, in payment for its capital stock, a secret remedy, formula, recipe or prescription for the cure of the morphine, cocaine, chloral, opium, liquor, tobacco and other drug habits and the diseases and infirmities caused by the habitual use of such drugs and to transfer to the defendant one-fifth of the capital stock of the said corporation.

IV.

That with intent to cheat and defraud the defendant and to induce him to execute and deliver the said original note for $5,000, the said Crane and Bellinger falsely and fraudulently represented and pretended to the defendant that the said Bellinger was the discoverer of and author of and in possession of the said secret remedy, formula, recipe or prescription and that the said was a secret and known only to the said Bellinger, and that the same was a sure and certain cure and a specific

for the said habits and diseases, and that they intended to deliver the said secret formula to the said corporation; that the said Crane and Bellinger, on the 15th day of March, 1893, procured a corporation to be organized, under the laws of the State of Washington, and then represented and pretended that they had transferred and assigned to the said corporation the said remedy, formula, recipe or prescription in payment for the entire capital stock of said corporation; that relying on the said representations and believing them to be true the defendant gave to the said Crane and Bellinger the said original note for $5,000; that the said representations and pretenses of the said Crane and Bellinger were and are wholly falsely and untrue and were known to be so by the said Crane and Bellinger when made; that the said Crane and Bellinger had not nor had either of them any secret or other remedy, formula, recipe or prescription for the cure of the said habits and diseases or either or any of the said habits and diseases, and they had not nor had either of them any intention to deliver to the said corporation any secret or other remedy, formula, recipe or prescription for the cure of any or either of the said diseases or habits, and they, the said Crane and Bellinger, did not nor did either of them give to the said corporation or its officers any information of the contents of any remedy, formula, recipe or prescription for the cure of the said habits and diseases or either of them and the said stock of the said corporation is and was wholly worthless and of no value whatsoever and was known to be so by the said Crane and Bellinger.

V.

That the defendant did not discover the fraud of the said Crane and Bellinger until on or about the 15th day of December, 1902.

VI.

Alleges that to induce the defendant to sign the notes sued upon in this action in substitution for the said note for $5,000, the Citizens' State Bank of Council Bluffs, Iowa, the payee in said notes, falsely represented to the defendant that it had taken the said original note for $5,000 in the ordinary course of business before maturity and had paid value therefor and without notice of any defense thereto; that in reliance on said representations and believing them to be true the defendant signed the notes sued upon in this action; that said representations were wholly false and untrue; that said plaintiff was not a bona fide holder of said original note for $5,000; that it took said note after maturity without paying any value therefor and with notice that said note was given without any consideration therefor and was obtained by the fraud of the said Crane and Bellinger.

Wherefore the defendant prays judgment as follows:

1. That the plaintiff's complaint be dismissed.

2. That the defendant recover his costs and disbursements, to be taxed.

GEO. McKAY,

Attorney for Defendant, 419-421 Arcade Building, Seattle, Washington.

State of Washington,
County of King,—ss.

J. A. Moore, being duly sworn, says: That he is the defendant named in the foregoing answer; that he has read the same, knows the contents thereof and believes the same to be true.

J. A. MOORE.

Subscribed and sworn to before me this 10 day of December, 1903.

ROBERT A. TRIPPLE,
Notary Public for the State of Washington, Residing at Seattle.

Receipt and a copy of due service hereof admitted this 10th day of December, 1903.

JAMES KIEFER,
Attorney for Plaintiff.

[Endorsed]: Answer. Filed in the U. S. Circuit Court, Dist. of Washington. Jul. 26, 1904. A. Reeves Ayres, Clerk. H: M. Walthew, Deputy.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA, Plaintiff,
vs.
JAMES A. MOORE, Defendant.
No. 1128.

Plaintiff's Amended Reply.

Comes now the plaintiff and for reply to the affirmative matters pleaded in the defendant's answer herein, says and alleges:

I.

The plaintiff denies each and every allegation contained in the first and second affirmative defenses pleaded in said answer.

II.

The plaintiff denies each and every allegation contained in the 1st, 2d, 3d, 4th, 5th and 6th paragraphs of the third affirmative defense, except that the plaintiff admits that the notes sued upon in the plaintiff's amended complaint were signed by the defendant in renewal of a note for $5,000.00 given by defendant to George J. Crane in March, 1893.

III.

The plaintiff also admits that it was agreed between George J. Crane and F. B. Bellinger and the defendant that a corporation should be organized under the laws

of the State of Washington, for the exploitation of a certain cure for morphine, cocaine, opium, chloral, liquor, tobacco and other habits, and that such corporation was organized.

IV.

The plaintiff denies each and every allegation contained in the first, second, third, fourth, fifth and sixth paragraphs of the fourth affirmative defense pleaded in said answer, except that the plaintiff admits that the notes sued upon in the plaintiff's amended complaint were signed by the defendant in renewal of a note for $5,000.00 given by the defendant to George J. Crane in March, 1893.

V.

And by way of new matter and for a further reply to said affirmative defenses, plaintiff says and alleges that the defendant is estopped from denying the title of the plaintiff to the notes herein sued upon, for the reason that the defendant has ever since the plaintiff has been the owner of said notes dealt with the plaintiff as the owner of said notes and has requested and obtained from the plaintiff extensions of time for the payment of said notes and the plaintiff has granted extension from time to time.

Wherefore, having fully replied plaintiff demands judgment as in its complaint prayed.

JAMES KIEFER,
JAMES McNENY,
Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

James Kiefer, being first duly sworn according to law, deposes and says, that he is the attorney for the plaintiff above named; that he has read the foregoing reply, knows the contents thereof and believes the same to be true; that he makes this verification on behalf of the plaintiff for the reason that the plaintiff is a nonresident and foreign corporation and none of the officers thereof are now within this district, and this action is brought upon written instruments for payment of money due and such instruments are now in the possession of affiant.

JAMES KIEFER.

Subscribed and sworn to before me January 17, 1906.

[Notarial Seal] OVID A. BYERS,

Notary Public in and for the State of Washington, Residing in Seattle.

Copy of within amended reply received and service of same acknowledged this 17th day of January, 1906.

GEO. McKAY,
For Deft.

[Endorsed]: Amended Reply. Filed in the U. S. Circuit Court, Western Dist. of Washington. Jan. 17, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States, for the Western District of Washington, Northern Division.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,

vs.

J. A. MOORE.

No. 1128.

Verdict.

We, the jury in the above-entitled cause, find for the defendant.

J. C. NORTON,
Foreman.

[Endorsed]: Verdict. Filed Feby. 2, 1906. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,

Plaintiff,

vs.

J. A. MOORE,

Defendant.

No. 1128.

Amended Motion for Judgment Notwithstanding Verdict.

Comes now the plaintiff by its attorneys and enters this its amended motion and moves the Court to enter

judgment herein in favor of the plaintiff for the full amount of plaintiff's demand pleaded and prayed for in its amended complaint, including interest and attorney's fees, notwithstanding the verdict rendered in this cause by the jury in favor of the defendant on the 2d day of February, 1906, on the following grounds and for the following reasons:

I.

That there was no competent or sufficient evidence to justify the verdict.

II.

That the plaintiff's motion requesting the Court to peremptorily instruct the jury to render a verdict in favor of the plaintiff should have been granted.

III.

That all the competent evidence in the cause showed that the plaintiff was entitled to recover the full amount of the plaintiff's claim.

IV.

That the evidence of the witness, Charles R. Hannan, relied upon by defendant, was not sufficient to entitle the defendant to have the case submitted to the jury.

This motion is based upon the record of evidence taken at the trial of this cause and upon the pleadings herein.

JAMES KIEFER,
JAMES McNENY,
Attorneys for Plaintiff.

Copy of the within motion received and service of same acknowledged this 17 day of Feb., 1906.

M. M. LYTER,
For Deft.

[Endorsed]: Amended Motion for Judgment Notwithstanding Verdict. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 19, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

United States Circuit Court in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA, Plaintiff
vs.
J. A. MOORE, Defendant.
No. 1128.

Petition for New Trial.

To the Honorable the Judges of the above-entitled Court:

Comes now the plaintiff and prays the Court to grant a new trial and to set aside the verdict herein entered February 2, 1906, on the following grounds, and for the following reasons:

I.

In that the evidence before the jury was not sufficient to justify the verdict.

II.

For error of law occurring at the trial and excepted to at the time by the plaintiff.

III.

That the Court erred in refusing to excuse the jury during the argument and decision of the plaintiff's motion for peremptory instructions in favor of the plaintiff, thereby prejudicing the case of the plaintiff before the jury.

IV.

That the Court erred in its instructions to the jury and particularly in this, that the Court refused to instruct the jury peremptorily to render a verdict in favor of plaintiff for the full amount of plaintiff's claim; and further in this, that the Court refused to give the instructions prayed by the plaintiff; and further in this, that the Court instructed the jury that if the Citizens' State Bank, plaintiff's assignor, at the time it took the original note sued upon, had no knowledge of such facts as would put a reasonably prudent man upon inquiry, it was the duty of the Citizens' State Bank and its officers to make inquiry concerning said facts affecting the consideration for and circumstances under which the note was given, and that the plaintiff would be bound by any facts which the Citizens' State Bank might have found by making such inquiry.

V.

That the evidence before the jury was insufficient to show any knowledge on the part of the plaintiff or the

plaintiff's assignor, of any facts or circumstances surrounding the taking of the original note for $5,000 made by the defendant in favor of George J. Crane in March, 1893, on the part of the Citizens' State Bank at the time of taking said note, so as to deprive the Citizens' State Bank of being a purchaser before maturity for value without notice. This without waiving plaintiff's motion for judgment notwithstanding verdict.

JAMES KIEFER,
JAMES McNENY,
Attorneys for Plaintiff,

Copy of within petition for new trial received and service of same acknowledged this 23 day of February, 1906.

L. C. GILMAN,
Atty. for Deft.

[Endorsed]: Petition for New Trial. Filed in the U. S. Circuit Court, Western Dist. of Washington. Feb. 23, 1906. A. Reeves Ayres, Clerk. R. M. Hopkins, Dep.

February 23, 1906.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
vs.
J. A. MOORE,
} No. 1128.

Order Denying Motion for Judgment, etc.

Now on this day this cause comes on to be heard upon plaintiff's amended motion for judgment, notwithstand-

ing the verdict rendered in this cause in favor of the defendant, the Court after hearing argument of respective counsel and being sufficiently advised in the premises, denies said motion.

And plaintiff's petition for a new trial herein being submitted to the Court without argument of counsel, the same is here and now denied.

[Entered]: Vol. 1, Gen'l Order Book, Circuit Court, Western District of Washington, page 158.

In the Circuit Court of the United States, Western District of Washington, Northern Division.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs.
No. 1128.
JAMES A. MOORE,
Defendant.

Judgment.

This cause came on duly and regularly to be heard the 24th day of February, A. D. 1906, upon the plaintiff's motion for a judgment in favor of the plaintiff notwithstanding the verdict heretofore rendered herein, James Kiefer, Esq., and James McNeny, Esq., appearing for the plaintiff, and L. C. Gilman, Esq., appearing for the defendant, and the Court having heard and considered said motion, and being fully advised in the

premises denied the same, to which action of the Court in denying said motion plaintiff, by its counsel, duly excepted and its exception was allowed by the Court; thereupon, the plaintiff filed and submitted to the Court a petition to vacate and set aside the verdict herein, and for a new trial of the above-entitled cause, and the Court having considered said petition, and being fully advised in the premises, denied the same, to which action of the Court in denying said motion plaintiff, by its counsel, duly excepted and its exception was allowed by the Court; thereupon, the defendant moved for judgment upon the verdict heretofore rendered herein, and the Court being fully advised in the premises granted said motion.

It is therefore considered and adjudged that the plaintiff take nothing by this action, and that the defendant James A. Moore, do have and recover of and from the plaintiff, The First National Bank of Council Bluffs, Iowa, the costs of this action to be taxed, and that execution issue therefor. Plaintiff, by its counsel, excepts to said judgment and each and every part thereof, and its exception is allowed by the Court.

Done in open court this 5th day of March, A. D. 1906.

C. H. HANFORD,
Judge.

We hereby acknowledge service of the foregoing judgment and the receipt of a true copy thereof, this 2d day of March, 1906.

JAMES KIEFER,
JAMES McNENY,
Attorneys for Plaintiff.

[Endorsed]: Judgment. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 5, 1906. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs.
No. 1128.
J. A. MOORE,
Defendant.

Bill of Exceptions.

Be it remembered that the above-entitled cause came on regularly for trial on Tuesday, January 30, 1906, at 10 A. M. before the Honorable C. H. Hanford, Judge, and a jury duly impaneled and sworn, the plaintiff appearing by James Kiefer and James McNeny, and the defendant, by George McKay, L. C. Gilman and M. M. Lyter, and thereupon the following proceedings were had, to wit: A jury was called, impaneled and sworn to try the cause, and thereupon a recess was taken until 10 A. M., January 31, 1906, and on January 31, 1906, at 10 A. M. an opening statement was made by counsel for plaintiff, and the plaintiff read in evidence the deposition of E. E. Hart, heretofore regularly taken in this cause, who testified in substance that he was president of the plaintiff bank, and that the notes in suit were

the property of the bank, had long been in its possession and had been delivered to it by the officers of the Citizens' State Bank, the payee named therein, by authority of the board of trustees of the Citizens' State Bank, and that the plaintiff paid a valuable consideration for the notes, and that the officers of the plaintiff had no knowledge of any alleged defense or defenses to the said notes on the part of the maker at the time of the delivery of said notes; and also read in evidence the deposition of one T. G. Turner, whose deposition was regularly taken, in substance that Charles R. Hannan was cashier of the Citizens' State Bank on January 2, 1902, and that he, Turner, had signed the assignment (Plaintiff's Exhibit "A") by authority of said Hannan, and that the notes in suit were delivered to the plaintiff bank on or about January 1, 1899, together with all other assets of the Citizens' State Bank, and came into the possession of the plaintiff for a valuable consideration; and plaintiff read in evidence the depositions of F. O. Gleason and F. Weis, who testified in substance that they were directors of the Citizens' State Bank of Council Bluffs, Iowa, in December, 1898, and January, 1899, and that the directors of the Citizens' State Bank had authorized the delivery of the notes in suit, together with the other assets of the Citizens' State Bank to the plaintiff for a valuable consideration, and that they were so delivered, and that the officers of the plaintiff bank had at that time no knowledge of any alleged defenses to these notes on the part of the maker; and

thereupon the plaintiff offered in evidence Plaintiff's Exhibit "A," in words and figures following:

Plaintiff's Exhibit "A."

Council Bluffs, Iowa, January 2, 1902.

For value received we hereby assign to the First National Bank of Council Bluffs, Iowa, our successors, notes for $2500.00, $2500.00 and $800.00, signed by J. A. Moore to us dated Jan. 2, 1897, and due six months after date.

CITIZENS' STATE BANK,
By CHAS. R. HANNAN,
Cas.

And thereupon, plaintiff offered in evidence Plaintiff's Exhibit "B," in words and figures following:

Plaintiff's Exhibit "B."

To the Directors of the First National Bank·

Resolved.—That owing to the fact that the stockholders of the Citizens' State Bank of this city are the owners of the stock of your bank, and in the interests of economy we wish to submit to you the following proposition:

First.—We propose to turn over to your bank sufficient cash, exchange and securities, including bills receivable, also banking-house and furniture and fixtures at a price as represented by our books, you to pay balance due contractor in an amount sufficient to liquidate the deposits of this bank in consideration of which you are to assume and pay off all liabilities of this bank to its depositors.

Second.—For and in consideration of one hundred and fifty thousand dollars ($150,000.00) we offer to turn over to you all the other assets of the Citizens' State Bank of whatever kind and description as shown by the books of said bank except such assets as are shown on list to be furnished, you to assume any legitimate claim against said bank and when proceeds of property listed be collected to be turned over to First National Bank of Council Bluffs.

Your acceptance of these two propositions carries with it the transfer of all obligations due to said bank and we hereby authorize our president and cashier to make proper transfers of real estate and personal property to you.

If you decide to accept the above proposition it must be done to-day, and you to make settlement to-day, immediately after close of business.

After a full discussion of the resolution it was adopted unanimously.

And thereupon the plaintiff offered in evidence the three notes mentioned in plaintiff's amended complaint, which were fastened together, received in evidence and marked Plaintiff's Exhibit "C," in words and figures following:

Plaintiff's Exhibit "C."

$2500. Council Bluffs, Iowa, Jan. 2, 1897.

Six months after date, for value received, I as principal promise to pay to the order of the Citizens' State Bank of Council Bluffs, Iowa, twenty-five hundred dol-

lars, at its office, with interest payable semi-annually, at eight per cent per annum after date.

And if interest be not paid when due it shall become as principal and draw interest at the rate of eight per cent per annum, payable semi-annually. This note is payable in gold coin of the United States of America equal to the present standard of value. The makers and endorsers hereof each hereby waive presentation for payment, notice of nonpayment and protest of this note, and due diligence in bringing suit against any party thereto, and sureties consent that time of payment may be extended without notice thereof. I also agree to pay all reasonable expenses, including commissions incurred in collecting this note, and a reasonable attorney's fee in addition, in case suit is brought hereon, the same to be taxed as costs of suit and in case of judgment to be entered as a part of the same. It is hereby agreed that any justice of the peace may have jurisdiction of any suit commenced for the collection of this note, not to exceed three hundred dollars.

J. A. MOORE.

$2500. Council Bluffs, Iowa, Jan. 2, 1897.

Six months after date, for value received, I, as principal, promise to pay to the order of the Citizens' State Bank of Council Bluffs, Iowa, twenty-five hundred dollars, at its office, with interest payable semi-annually at eight per cent per annum after date.

And if interest be not paid when due it shall become as principal and draw interest at the rate of eight per cent per annum payable semi-annually. This note is

payable in gold coin of the United States of America equal to the present standard of value. The makers and endorsers hereof each hereby waive presentation for payment, notice of nonpayment and protest of this note, and due diligence in bringing suit against any party thereto and sureties' consent that time of payment may be extended without notice thereof. I also agree to pay all reasonable expenses, including commissions incurred in collecting this note, and a reasonable attorney's fee in addition, in case suit brought hereon, the same to be taxed as costs of suit and in case of judgment to be entered as a part of the same. It is hereby agreed that any Justice of the Peace may have jurisdiction of any suit commenced for the collection of this note, not to exceed three hundred dollars.

J. A. MOORE.

$800. Council Bluffs, Iowa, Jany. 2, 1897.

Six months after date, for value received, I, as principal, promise to pay to the order of the Citizens' State Bank of Council Bluffs, Iowa, eight hundred dollars, at its office, with interest payable semi-annually at eight per cent per annum after date.

And if interest be not paid when due it shall become as principal and draw interest at the rate of eight per cent per annum payable semi-annually. This note is payable in gold coin of the United States of America equal to the present standard of value. The makers and endorsers hereof each hereby waive presentation for payment, notice of nonpayment and protest of this note,

and due diligence in bringing suit against any party thereto and sureties consent that time of payment may be extended without notice thereof. I also agree to pay all reasonable expenses, including commissions incurred in collecting this note, and a reasonable attorney's fee in addition, in case suit is brought hereon, the same to be taxed as costs of suit and in case of judgment to be entered as a part of the same. It is hereby agreed that any Justice of the Peace may have jurisdiction of any suit commenced for the collection of this note, not to exceed three hundred dollars.

J. A. MOORE.

And thereupon the plaintiff called as witnesses Ira Bronson, Charles McAllister and James Kiefer, who gave evidence tending to prove that J. A. Moore, the defendant herein, was not a resident of the State of Washington, and was not in the State of Washington in July, August, September and October, 1897, but came into the State of Washington in November or December, 1897, and that said Moore had no place of residence in said State during July, August, September and October, 1897.

The incorporation of the plaintiff and the Citizens' State Bank of Council Bluffs, Iowa, was admitted.

It was agreed that the matter of attorneys' fees in the event of recovery by the plaintiff be postponed and left to be fixed by the Court after a verdict in favor of the plaintiff, if any.

Plaintiff's Exhibit "D" becomes irrelevant.

Plaintiff thereupon offered in evidence a number of letters written by the defendant to the plaintiff, which were received in evidence and marked Plaintiff's Exhibits "E" to "O," inclusive, in words and figures following:

Plaintiff's Exhibit "E."

Seattle, Washington, Mar. 24, 1902.

Mr. T. G. Turner, Cashier 1st Natl. Bank, Council Bluffs, Iowa.

Dear Sir: In reply to your favor of 18th inst. would state that during the past two years Mr. Hannan and I have had considerable correspondence regarding the settlement of the claim of the old Crane notes; and I have letters from Mr. Hannan in which he states that your bank would be willing to settle on the same terms with the balance of my other creditors. It was on his urgent request and advice that I decided not to take advantage of the bankruptcy law in '97 or '98. The panic of '93 caught me as it did many others, and not only swept away all of the property that I had, but left me with judgments hanging over my head to the amount of about $50,000. With these different judgments I have been struggling for the past four years. I am still paying some of these off in monthly payments not being able to pay them all off in cash, as I have had to pay them as I could make it. To place this matter in an attorney's hands for collection at the present time would harass me exceedingly and be a detriment to yourself. You state in your letter that the proposition I made to you

was 25% less than you could take. I appreciate the consideration of Mr. Hannan in this old matter in not pushing this claim in the form of a judgment, as did some of my other creditors; for this treatment I am willing to pay you a higher rate of settlement than I made with the other parties; I therefore accept the suggestion in your letter that you would like to settle for 25% more than my offer; and if you will recall your notes from Seattle by telegraph, notifying me of the same, on the receipt of this letter I will conclude the settlement with you direct.

It will be impossible for me to pay cash on this matter, but will divide it up into quarterly payments extending over one year, and make a payment down of one-fifth of the amount agreed upon, and put the balance into notes signed by myself and endorsed by our company, which will make them absolutely good.

This proposition is made, Mr. Turner, with the understanding that you will immediately wire me on the receipt of this letter of your acceptance of the same, and the withdrawal of the notes from the party who now holds them; for if suit is commenced I will refuse to pay anything at present, and will submit Mr. Hannan's letters stating that he was willing to settle on the same terms that my other creditors did in Seattle. However, I hope that this matter can be adjusted amicably as it will be much more satisfactory both to you and myself.

Hoping to hear from you at once, I remain,

Yours very respectfully,

J. A. MOORE.

Plaintiff's Exhibit "F."

New York, Feb. 22, 1902.

Mr. T. G. Turner, Council Bluffs, Ia.

Dear Sir: Your esteemed favor of the 10th inst. received, and am sorry to hear that I will not have any more pleasant letters from Mr. Hannan. Regarding that note would state that the proposition made to Mr. Hannan was fully as good as that accepted by my other creditors in Seattle, and I am pleased to state that another year's hard work will see almost if not all my old debts paid off. I have been paying debts for the last three years—by the month, quarterly and semi-quarterly, and my creditors of "93" were all willing to accept it in this way, otherwise I could not have paid them at all and would have been compelled to take advantage of bankruptcy. Please look up my last proposition to Mr. Hannan and see if you can't accept it and thus close out this old paper. Will be in Seattle about March 10th.

Yours very respy

J. A. MOORE.

Plaintiff's Exhibit "G."

Seattle, Washington, Oct. 8, 1901.

Mr. Chas. R. Hannan, Cashier 1st Natl. Bank, Council Bluffs, Iowa,

My dear sir: In reply to your esteemed favor of 3d inst., would state that while the offer seems low to you in connection with the settlement of that old matter, yet it is really a higher percentage both in the amount of

payment per month and the total, than was paid to other parties in this city on similar matters. I feel that I have made you as liberal an offer as I possibly can, Mr. Hannan, and do not feel that under the circumstances I can do any better.

Yours respectfully,

J. A. MOORE.

Plaintiff's Exhibit "H."

New York, Sept. 11, 1901.

Mr. Chas. R. Hannan, Council Bluffs, Ia.

Dear Sir: In reply to your esteemed favor of 31st ult. which has just reached me here would state that I am willing to do what is fair on that old Crane and Bellinger note, and when I offered you $1000 for a settlement I was doing fully as much as the basis on which I am paying out my old debts with two Seattle banks. However, Mr. Hannan, you have been very nice about it and I appreciate your fairness in the whole transaction. For such consideration I will pay you $1500.00 for the claim, paying $250.00 cash and $250.00 per month until paid. I will be in Seattle October 1st so please write me there and oblige Yours very sincerely

J. A. MOORE.

Plaintiff's Exhibit "I."

Seattle, Washington, Jan. 9, 1901.

Mr. Chas R. Hannan, First Natl. Bank, Council Bluffs, Iowa,

Dear Sir: In reply to your esteemed favor of the first inst. would state that I have no other proposition to

make that would interest you any further than the one I made to you some time ago. I felt that that was the best and I still think so. If you wish to take the matter up on about the same basis I will be glad to reconsider the proposition with you.

Yours very truly

J. A. MOORE.

Plaintiff's Exhibit "J."

Seattle, Washington, Jan. 30, 1901.

Mr. Chas. R. Hannan, Cashier First Natl. Bank, Council Bluffs, Iowa.

Dear Sir: In reply to your favor of 19th inst. regarding that old note of Crains & Ballinger's would state that I believe my former proposition was to pay you $1000 in monthly installment of $100 until it was paid. I have been struggling with similar debts for the past two years and it will probably take me two years more before I get them all paid off. I will renew the above proposition and pay it either through one of our local banks or direct to you, or I will give you two notes of $500 each due in three and six months, with bankable paper.

Yours very sincerely

J. A. MOORE.

Plaintiff's Exhibit "K."

Seattle, Washington, Feb. 8, 1901.

Mr. Chas. R. Hannan, Cashier First Natl. Bank, Council Bluffs, Iowa.

Dear Sir: In reply to your esteemed favor of 4th inst.

would state that looking at the matter from my standpoint my proposition was both fair and just to myself and family. As there are two different sides to look at this proposition I feel that I am making a very fair proposition indeed, and one that was accepted by our own local people in settlement of some claims by our local banks. As this whole matter emanated from your town and your fellow-townsmen received all the profits, I do not feel like being more liberal by way of settlement with your banks than I was with our own. Of course if you would rather lose the entire amount than compromise on this matter I have nothing more to say, but I am willing to effect a settlement with you on just the same terms that I am now doing with local banks and if you so desire I can refer you to said banks here.

Yours respectfully

J. A. MOORE.

Plaintiff's Exhibit "L."

New York, March 13, 1900.

Mr. Chas. R. Hannan, Council Bluffs, Ia.

Dear Sir: Your esteemed favor of 10th Jan. has just reached me here. Regarding the closing up of a big land deal would state Mr. Hannan that I have closed up quite a number of realty deals during the past year, but every dollar of available profit has been applied to judgment creditors in Seattle, who like hungry wolves are baying at my heels all the time. If I have my health and live long enough I expect I will get out of debt before I die. But I tell you that it is a big undertaking.

Some creditors make it extremely hard for me to get up, as they hurt my standing by taking judgment and constantly harassing me. I am pleased to say you have not been one of them. I hope to be able to do something for you during the year, Mr. Hannan, and when I do I shall not forget your decent treatment.

Sincerely yours

J. A. MOORE.

Will be in Seattle before the 1st.

Plaintiff's Exhibit "M."

New York, May 30, 1899.

Mr. Chas. R. Hannan, Council Bluffs, Ia.

My dear sir: Your esteemed favor of 24th inst. just received by me this morning on my return from Boston, and will confess that I have a "hen on" and am watching her very closely. Am glad that you too have enjoyed the luxury of stopping at what I consider the greatest hotel in the world, and my observation covers Europe as well as our own country. Now, Mr. Hannan, please do not crowd me more on that old matter. I would like to do as you suggest but I really cannot now. I am struggling under all that I can carry, and you must accept my proposition that I have made. It is fully as good as some of my Seattle settlements. I cannot pay cash now but would have to pay as per my first proposition. I should like to come via C. B. and talk the matter over with you, but it is impossible at this time as I have my ticket via St. Paul. But I will have to come east again soon and will come via your city unless we

arrange it before that time. I leave this P. M. for the coast.

Very sincerely yours,

J. A. MOORE.

Plaintiff's Exhibit "N."

New York, May 22, 1899.

Mr. Chas. R. Hannan, Council Bluffs, Ia.

My dear sir: Your esteemed favor of 8th inst. sent to Seattle has just reached me here, and must say Mr. Hannan that I fully appreciate what you say in regard to the odium that is attached to any man's commercial standing if he has passed through bankrupty, and while it means a long struggle for me, yet I am going to try to compromise and settle. I am a fighter from way back and hate to be beaten and never would have been in a fair fight, but five years depression was too much for me, and it simply carried everything away but my debts. Now, Mr. Hannan, I would like to make you a proposition that would make your directors pleased but I don't see how I can, but I will do this, add 25% to the proposition I submitted and I will try it. If you do not feel like doing this just let the acct. stand six months and I might be able to make the amount cash that I have suggested, but just use your own judgment.

Very sincerely yours

J. A. MOORE.

I will be here until the 1st when I leave for Seattle on the Great Northern road via St. Paul.

Plaintiff's Exhibit "O."

Seattle, Wash., March 13, 1902.

Citizens' National Bank, Council Bluffs, Iowa.

Gentlemen: Since my return to Seattle I received notice from an attorney by the name of James Kiefer stating that he had those old Crane notes for collection, and unless payment was made immediately he would proceed to collect the same. If you ever wish to receive any money from these notes you must take them out of the hands of this attorney * * *. I will not even talk settlement with you while he holds these notes. Of course he can take judgment but I will let it stay there until it outlaws before I will settle through him.

Yours respectfully,

J. A. MOORE.

And thereupon the plaintiff rested.

Whereupon the defendant's counsel made an opening statement to the Court and jury.

The plaintiff interposed an objection to any testimony being offered in support of the third and fourth alleged affirmative defenses pleaded in the answer, for the reason that no sufficient defense is pleaded in either of those answers and therefore no testimony is admissible in support of them.

Objection overruled by the Court and exception allowed to the plaintiff.

The defendant thereupon read in evidence a transcript of the testimony of C. G. AUSTIN heretofore given in another trial of this cause. The witness testified in substance that he had resided in Seattle for the last fourteen years, and in 1893 and 1894, knew George J. Crane and F. P. Bellinger, and that they established here a sort of sanitarium for the cure of the drink, morphine and tobacco habits.

The plaintiff objected to the evidence of the witness Austin on the ground that the plaintiff's assignor, the Citizens' State Bank of Council Bluffs, was the owner of the original paper of which the notes sued on were renewals, for value, and without notice of any of the facts, and therefore the testimony is incompetent and irrelevant, and also upon the further ground that the negotiations leading up to the execution of the contract between the defendant and the Bellinger German Remedy Co., F. P. Bellinger and George J. Crane are incompetent, and also renewed its objection to the admissibility of any testimony in support of the third and fourth affirmative defenses, all of which were overruled and exceptions allowed by the Court, these objections and exceptions to apply to all the testimony of the witness Austin.

And thereupon the witness testified in substance as follows: That Crane and Bellinger offered to make it an object to Austin if he induced Moore, the defendant, to join in the organization of a company covering the whole of the United States, Canada and England, and practically the entire world, and that after making

(Testimony of C. G. Austin.)

some investigations Austin interviewed Moore in regard to the matter, and that he finally induced Moore to visit the sanitarium or institute in company with Austin, and that he was present at conversations between Moore, Crane and Bellinger in reference to the cure of which they claimed to have the formula, and that Dr. Bellinger made all the statements in regard to the formula; that Crane was not a physician, was simply interested with Dr. Bellinger in the ownership of the so-called formula, and that Dr. Bellinger explained both to the witness and to Moore very many times that it was a remedy that was a sure cure; that the formula had been prepared by his father, who had been a physician or surgeon in the German army, and on his death he left this formula as a part of the estate to go to the one of his three sons, who were all physicians, who could pay the greatest price for it, and that his father had maintained, after retiring from the army in Germany, for a considerable number of years, a sanitarium for the relief or cure of inebriates of various kinds, and it had proved a wonderful success, and there was no one either there or in this country that knew of the formula, and that he was in a position financially to give the highest price of all the brothers, and he had paid the highest price for it, and that price had carried with it that the receipts for this formula should be divided equally between the other two sons, and it was done, and that Dr. Bellinger had said that it was an absolute cure for

(Testimony of C. G. Austin.)

the drug habits, and that a certain physician had been consulted regarding it and had undertaken to analyze it, and that this preparation was quite expensive, and that it contained a certain drug that could not be procured in this country, and they had to send to Germany for it, and that there was not chemist in the United States who could analyze or determine what it was, and that he had sent it to Philadelphia to an eminent chemist there and he had said that he was unable to ascertain what one ingredient was but it was purely vegetable, and that Moore took an interest in the business, and that witness was interested with Moore and Dr. Bellinger in the company that was organized, and that there was an agreement to the effect that the formula was to be sealed up, placed in a safe deposit vault in the Merchants' National Bank and was to remain in that box intact and nobody was to have access to it. No officer of the company was permitted to open it—nobody unless Dr. Bellinger should die or lose his faculties—in that case the company was to elect a man, a physician, to take his place, and he was to be permitted to examine the formula and prepare the medicine. That the company afterward broke up and the witness went with others to the safe deposit box where the formula was supposed to be and found nothing but a piece of blank paper; and upon cross-examination he testified that he remained with the company that was formed by Bellinger and Crane with Moore for about two years, and that they carried on business during that

(Testimony of C. G. Austin.)

period and that he acted as secretary of the company; that no one accounted for any moneys in the concern either to the witness or to anyone else so far as he knew, and that Dr. Bellinger had a contract to furnish the medicines to the corporation formed by Crane, Bellinger and Moore, and did furnish them so long as the company was willing to pay the cost of them.

And thereupon the defendant, over the same objections and exceptions on the part of the plaintiff, read in evidence the deposition of Dr. F. P. BELLINGER, taken on behalf of defendant, May 2, 1903, in Council Bluffs, Iowa, as follows:

Interrogatory 1.—Did you ever have a formula for the cure of the morphine, cocaine, opium, chloral, liquor and tobacco habits, or either of said habits? If so, state when you discovered it.

Answer.—Yes, sir, I have a remedy for some of those cases, that is, drug habits; I discovered it about twenty years ago.

Interrogatory 2.—Are you the author or discoverer of such a formula as is mentioned in interrogatory No. 1?

Answer.—I am.

Interrogatory 3.—Are the contents of said formula known to any person besides yourself? If so, state the name of such person or persons.

Answer.—Not to my knowledge.

Interrogatory 4.—State the contents of said formula?

And thereupon the plaintiff, in addition to the ob-

(Deposition of F. P. Bellinger.)

jections heretofore made, made this further objection, that Dr. Bellinger entered into a written contract with the corporation which the defendant alleged was to have been formed and was formed, and that the contract was reduced to writing and all negotiations were merged into it, and therefore this testimony is incompetent, which objection was overruled by the Court and exception allowed, and the plaintiff interposed a further objection that by written contract Dr. Bellinger was under contract with the Bellinger German Remedy Co. not to disclose this formula to anyone, and that as between Bellinger and said corporation the relation of patient and physician practically existed, and that therefore the witness is prohibited by the statute of the State of Washington, from making any disclosure; which objection was by the Court overruled and exception allowed to plaintiff, and the interrogatory was answered as follows:

"Answer.—I prefer to answer that by saying that I intend to be present at the trial of this case and prefer answering the question at the time of the trial. I prefer not to answer it now. I will say that I always put up this remedy myself, and each and every case is treated separately; there is no one regular prescription to be used for everyone and they know that. It is not a patent medicine; it is a formula I have for treating individual cases; I always put up this remedy for each individual case, and it is almost impossible to answer that question unless you know the particular case.

(Deposition of F. P. Bellinger.)

Interrogatory 5.—Did you ever deliver the said formula to any of the officers of the Bellinger German Remedy Company; if so, state the name of such officer, and the office he held in the said corporation?

Answer.—I placed the formula in a safety deposit box in trust for the company, for the Bellinger German Remedy Co., but it was subject to no one's orders except my own, and only in case of an accident to me; there was no one permitted to have access to it to my knowledge, unless, of course, it was some of the officers of the company unknown to me. It was placed in the safety deposit box in trust, subject to the order of the medical director of the company, who was myself. To make that more intelligible, I will answer that this way: I put the prescription in the safety deposit box for the company, that is, in trust for the company in case some accident should happen to me, the company then would have access to it; that was ordered by the members of the company. I was instructed to place it in the safety deposit box and I did that subject to my order as medical director. I was the only one who would have access to it; in case they wanted to make any addition or improvement I was the only one who had a right to do that.

Interrogatory 6.—Did you ever disclose the contents of said formula to any other person; if so, to whom and when and for what purpose?

Answer.—I did not."

(Deposition of F. P. Bellinger.)

And finally the witness answered interrogatory 4, as follows:

"Cinchona, popine, gentian, belladonna, neurasine, nux vomica, anodyne, coco, colombo, glycerine. I vary the amount with each individual case."

And thereupon the defendant read in evidence the deposition of CHARLES R. HANNAN, taken in Detroit, Michigan, on May 20, 1904, who testified that his name was Charles R. Hannan, 47 years old, resided at Council Bluffs, Iowa; was a banker by occupation; that he has known the plaintiff bank since 1885, and was cashier of the plaintiff bank from December 31, 1899, and elected president, which position he held until January 29, 1902. That he has known this defendant since some time after taking in note from George J. Crane, and that defendant stopped off at Council Bluffs en route from the east to see witness about the renewal of the note; that he had not known him intimately, only in a business way; and further testified:

Interrogatory 5.—Did you ever take from George J. Crane a note signed by the defendant in this action? If so, state fully the circumstances under which you took the said note and state fully for whom you were acting at the time you took the same.

Answer.—I did take from George J. Crane a note signed by Mr. Moore. It was while I was cashier of the Citizens' State Bank. I had learned from Mr. Crane of the transaction he had with Mr. Moore and he had

(Deposition of Charles R. Hannan.)

advised me of the details of the deal and that he had Mr. Moore's note. Mr. Crane at that time was owing us quite a sum of money, the collateral to which I did not consider of much value, and being anxious to obtain as much collateral as possible for the note prevailed on him to turn the note over to us, which he eventually did.

Interrogatory 6.—If you say that the note was taken by you on behalf of the Citizens' State Bank of Council Bluffs, Iowa, state fully what interest in the said note was acquired by the said bank and what consideration, if any, was paid or given by the said bank for the said transfer.

Answer.—There was no consideration given for the note; I simply obtained it as additional collateral and filed it along with the collateral we then had which consisted of a lot of old insurance notes. Mr. Crane simply endorsed the note in blank and turned it over.

Interrogatory 7.—State fully the knowledge, if any, which you or the said bank had as to the consideration given by the said George J. Crane or F. P. Bellinger to the defendant for the said note of the defendant.

Answer.—Mr. Crane had fully explained to me just what he was doing—explained what they tried to do in Denver, San Francisco and other places before they went to Seattle, and I was fully advised at all times as to what he was doing. I knew full well what the note was given for it having been given for the recipe and

privilege of using the recipe for an opium and whisky cure.

Interrogatory 8.—State fully whether you had such knowledge, if any, at the time you took said note from the said Crane.

Answer.—As answered in interrogatory 7, I state that I knew all about the consideration for the original note.

Interrogatory 9.—Did the said bank ever acquire more than a one-half interest in the said note and if not to whom did the other half of said note belong?

Answer.—At the time the note was taken over I supposed it belonged fully to Mr. Crane as he so advised. Later on Dr. Bellinger claimed he had a half interest in the note.

Interrogatory 10.—Did the defendant ever renew the said note? If so, to whom was such renewal note or notes given, state fully?

Answer.—The note given by Mr. Moore was renewed a number of times and my recollection is that the renewal was always made to the Citizens' State Bank. The collateral book and other books of the bank are the best evidence of this.

Interrogatory 11.—State fully what was said or written to the defendant by you or any other officer or agent of said bank to your knowledge, in relation to how said bank acquired the original note of the defendant, and whether said bank held the entire interest in said orig-

(Deposition of Charles R. Hannan.)

inal note, and whether said bank was a bona fide purchaser or holder of said original note, and whether the said bank advanced anything when it acquired said original note.

Answer.—I wrote Mr. Moore many letters or caused them to be written in behalf of the Citizens' State Bank of Council Bluffs, always claiming that the bank had acquired the entire note in good faith, for value, and without notice, as the letters written by me while in the bank will show, and as stated above the bank did not advance any money or give any consideration. It did not even renew Mr. Moore's original note at the time the collateral was taken on. I wrote Mr. Moore many letters, copies of which are in the copy-books of the bank. I said anything and everything I could to get a little money out of the note. I may have signed the name of my president several times in writing these letters, but when the letters went out it was usually at my dictation.

Interrogatory 12.—Who was the cashier of the Citizens' State Bank of Council Bluffs, Iowa, on the 2d day of January, 1902?

Answer.—I have been cashier of that bank since 1885. My successor has never been elected and qualified.

Interrogatory 13.—If you answer that you were such cashier on January 2d, 1902, state whether you had given any authority to T. G. Turner to sign your name

(Deposition of Charles R. Hannan.)

to an assignment of the three renewal notes made by the defendant?

Answer.—I have never given T. G. Turner or anyone else authority to sign my name as cashier of that bank, either in writing or otherwise.

Interrogatory 14.—If you gave any such authority, state fully how such authority was given by you.

Answer.—This is answered in interrogatory 13.

Interrogatory 15.—State fully whether you gave any directions to the said Turner to sign your name to said assignment, if so state when and how you gave such direction. State fully.

Answer.—I did not give any such authority to sign in any way.

Interrogatory 16.—What authority, if any, did you give the said Turner to assign the notes of the Citizens' State Bank of Council Bluffs, and if you attempted to give him any such authority, state how it was conferred.

Answer.—As stated above I reiterate that I have never given T. G. Turner or anyone else authority to sign my name as cashier of the Citizens' State Bank for the assignment of any papers. In this I am quite positive. If any such authority was ever given the written authority would be the best evidence. My best recollection is that I have never given it, but if I did give it, it would be in writing.

Interrogatory 17.—Did you ever sign or execute any assignment or transfer of the said renewal notes given by the defendant? If so when and to whom?

(Deposition of Charles R. Hannan.)

Answer.—I have never given any such assignment.

Cross-Interrogatory 1.—When did you cease to be cashier of the plaintiff in this cause?

Answer.—When I was elected its president.

Cross-interrogatory 2.—Have you sold out your stock of the plaintiff in this cause to T. G. Turner who is now cashier of the plaintiff?

Answer.—I never sold any of my stock to T. G. Turner. In January, 1902, I sold the controlling interest in the First National Bank to one E. E. Hart at $400 per share, and I also caused a contract to be made between Mr. Hart and Mr. Turner for the sale of Mr. Turner's stock for a consideration of $275 per share. I tried to get as much for Mr. Turner's stock as I got for my own he being a brother in law of mine, but Mr. Hart would not pay it. Either Mr. Hart or Mr. Turner could exercise the right of purchase or sale at any time, it being optional. At this time the capital stock of the bank was but $100,000, surplus $25,000, and undivided profits upwards of $40,000. As soon as Mr. Hart became its president he borrowed of the bank upon the notes of himself, family and clerks upwards of $200,000 to pay me for the stock acquired from me.

Cross-interrogatory 3.—Are your relations with T. G. Turner, now cashier of the plaintiff, and the other officers and the principal stockholders and directors of the plaintiff friendly?

Answer.—So far as I know, the relations with the officers of the bank, its stockholders and directors, are

(Deposition of Charles R. Hannan.)

friendly; at least I have always believed them to be good friends of mine, with the exception of the president Mr. Hart, whom I have reason to believe is not very friendly toward me.

Cross-interrogatory 4.—When did George J. Crane tell you how he acquired the original note given by the defendant to said George J. Crane for the sum of five thousand dollars?

Answer.—Mr. Crane advised me upon his return to Council Bluffs from Seattle and the west how he had obtained Mr. Moore's note. This was prior to our taking the note.

Cross-interrogatory 5.—If you have testified that George J. Crane, the payee in the note for five thousand dollars made by the defendant herein to said Crane in March 1893, told you anything with regard to the consideration of the said note at or before the time he negotiated said note to you, state how, when and where he made such statement to you.

Answer.—The statement was made orally by him in our banking office.

Cross-interrogatory 6.—If you have testified that George J. Crane, payee in the note for five thousand dollars made by the defendant to said Crane, made statements to you affecting the consideration for said note, state whether you communicated those facts or statements to any other officer or any director of the Citizens' State Bank?

(Deposition of Charles R. Hannan.)

Answer.—I am satisfied that every director in the bank knew of the condition of Mr. Moore's collateral, as Crane' note was considered doubtful, and Mr. Moore's collateral also. I know positively that my former presiden, Mr. Edmundson, and I think the vice-president, Mr. Shugart knew particularly touching the matter, as I always explained every matter pertaining to the bank fully to our president Mr. Edmundson.

Cross-interrogatory 7.—Is it not a fact that after the merger of the Citizens' State Bank of Council Bluffs into the First National Bank of Council Bluffs, the plaintiff herein, T. G. Turner had general authority to sign your name as cashier of said bank whenever necessary to carry out and effectuate said merger and transfer; and is it not a fact that said Turner did frequently sign your name to transfers, endorsements and assignments whenever necessary to carry out and effectuate such transfer and absorption of the assets of the Citizens' State Bank by the plaintiff herein?

Answer.—It is not a fact that Mr. Turner had authority to sign my name as cashier of the Citizens' State Bank, because I was always present and made it a point to look after the details of the bank in which I was interested, and always did. It may be that Mr. Turner did use my name, but I have no recollection of it. In all matters of endorsements and assignments it was always my custom to sign myself.

Cross-interrogatory 8.—Is there not a feeling of hostility and unfriendliness between yourself and the offi-

(Deposition of Charles R. Hannan.)

cers and directors of the plaintiff herein, and has there not been such feeling of hostility and unfriendliness between you and the other officers and the principal stockholders and directors of the plaintiff since you closed your connection with the plaintiff?

Answer.—I do not think there is. I have heard since I announced last fall that I would open a bank in Council Bluffs some time during the coming season that its president, Mr. Hart, was "throwing the harpoon into me" every time an opportunity afforded; in fact I am satisfied he has done so in two or three instances, because it has come to me direct, but I pay no attention to this because I take into consideration statements coming from a man who in his position as president of the First National Bank of Council Bluffs would use its deposits as was done by himself. To explain: at the time I sold my stock to him the bank had a capital of $100,000, surplus of $25,000, and undivided profits of upwards of $40,000. There is a United States law governing National Banks, which states that no officer of a national bank shall loan to any individual or firm to exceed ten per cent of its capital stock. In this case the limit to any individual or firm would be $10,000. In the face of this law, as soon as Mr. Hart became president of the bank, he borrowed from the bank through himself, family and clerks in his office, upwards of $200,000, the proceeds of which came to me in payment for my stock. A man who would do a thing of this kind and then swear to statements as he has done I believe will

(Deposition of Charles R. Hannan.)

sooner or later come to the level where he belongs, and I do not believe that statements emanating from a man of this kind can injure me in the least. So far as the other officers and directors of the bank are concerned, I have always believed them to be my friends, and most of them have been associated with me during the time I have been in the banking business in Council Bluffs. If the other officers and directors have "it in" for me in any way I am not aware of it.

Cross-interrogatory 9.—When did you cease to be cashier of the plaintiff?

Answer.—At the time I was elected president of the bank.

Cross-interrogatory 10.—Have you not written to the defendant J. A. Moore frequently letters in the capacity of the cashier of the plaintiff and cashier of the Citizens' State Bank, demanding of Moore payment of the notes?

Answer.—I have already stated that I have written Mr. Moore many times endeavoring to collect the note.

Cross-interrogatory 11.—How many times did the defendant Moore renew his original note of five thousand dollars after it was acquired by the Citizens' State Bank and did he not make payments of interest thereon from time to time?

Answer.—I cannot say how many times the note was renewed. The books of the bank would show exactly. Several times at least. I did collect interest from Mr. Moore in one or two instances—possibly more.

And thereupon an adjournment was taken until 10 A. M. February 1, 1906.

JAMES LEE, a witness on behalf of the defendant was duly sworn and admitted by plaintiff to be qualified as an expert pharmacist, and thereupon testified that in compounding medicines a formula would enumerate the quantities of drugs to be used in the prescription, and that if a formula reading as follows: cinchona, popine, gentian, belladonna, neurasine, nux vomica, anodyne, coco, colombo and glycerine, was presented to be compounded he could not compound it, for the reason that nothing could be compounded from it, and that cinchona is a bitter tonic from which quinine is obtained; that popine is a patent medicine; gentian a bitter root, belladonna the same; neurasine a patent medicine; nux vomica a bean from which strychnine is abtained, and that there is no such drug known as anodyne, the term belonging to anything which relieves pain whether external or internal, and is usually applied to anodyne liniment for the relief of pain; coco is a leaf and colombo a root, and that among none of these drugs is there an unknown German plant or herb, and that they are common drugs well known to everybody, and that it would be impossible to mix these drugs to have any effect by way of the cure of opium, tobacco or alcohol habits, and that the formula is not intelligible.

IRA D. BRONSON, called and sworn on behalf of defendant, testified that he resided in Boston, Massachusetts, and was in the city of Seattle in 1893, and met F. P. Bellinger and George J. Crane and got well acquainted with them. That he knew J. A. Moore at that time and was asked whether he was present when any negotiations between Crane and Bellinger with J. A. Moore took place.

And thereupon the plaintiff objected to any and all evidence in support of the third and fourth affirmative defenses, on the ground that they do not state facts sufficient to constitute a defense; and further objected to the evidence offered upon the ground that the contract between Dr. Bellinger and the Bellinger German Remedy Co. pleaded in the defendant's answer is a written contract, and therefore the prior negotiations are incompetent and inadmissible, which objection was overruled by the Court and exception allowed to plaintiff, and the witness answered as follows:

A. About the first of March 1893, I don't remember the exact date but about the first of March, at the request of Mr. Moore, I went with him to an institute, so-called, that was operated by F. P. Bellinger and George J. Crane. * * *

A. I say, about the first of March, I, at the request of Mr. Moore, went to an institute, a so-called institute, that was operated by a Mr. George J. Crane and F. P. Bellinger, to investigate the value and the efficacy of a certain formula and remedy, as we called it, for the cure of the habit of tobacco, alcoholism, morphia and

(Testimony of Ira D. Bronson.)

cocaine. At that meeting we met Mr. Bellinger; I think Mr. Crane was there at that first meeting—that is my impression, I think I saw him. I stated to Mr. Bellinger what I had come for, and he at once told me—I cannot give you the language, no, I cannot do that, but I can give you the substance of it. * * *

A. That is many years ago. He said that he had a remedy that his father had discovered while he was a surgeon in the German army; that while his father was there in that position he had quite a number of soldiers who were addicted to alcoholism, and he searched to find a cure and at last discovered a herb from which he concocted, and with other things, a remedy which acted very nicely and cured the patients that he had, the soldiers. Some time after, how long I don't know, that remedy came into his possession, whether by gift, purchase or otherwise, I don't know; but he was the owner of it, and that after he became the owner of it he experimented with it and spent years, a good many years, in experimenting and in perfecting it and to that extent that it would not only cure alcoholism but also the tobacco habit and finally the cocaine and the morphia habits. In our conversation I asked him whether he was the owner of it or not. He said he was. Then I asked him about the efficacy of it, what it would do. He reiterated that it would cure those habits. Then I asked him what length of time it would take to cure them, and he said that the tobacco habit could be cured in from

(Testimony of Ira D. Bronson.)

ten days to three weeks, and my recollection is he said that some few cases he had cured even in a week. That I am not absolutely positive of, whether it was he or Mr. Crane may have said that, but I think it was Mr. Bellinger. Then I asked him if that was a cure, was a permanent cure. He said "Oh, yes." They never wanted to use tobacco afterwards. Then I asked him how long it would take to cure the alcohol habit. He said from two to three weeks, possibly four; ranging from two to four weeks, and that that was a positive cure also. Then I asked him in regard to the liquor habit—I mean the morphine habit. He said that that would take from four to six weeks. I asked him if he had had any very severe, serious cases. "Many," he said. I asked him if he always cured them. He said he did. I asked him what length of time. He said, "From four to six weeks." Being a little sceptical, I asked him further, "Are you sure that you can cure the worst habit—the worst patient, those who had been addicted the longest, in six weeks?" "Yes," he said, "almost all cases, but there may be once in a great while a case that would take eight weeks but that would cure any, absolutely any case." That, I think, was all that we had at that meeting in relation to that. I mean by that that that is all I remember.

And afterwards testified that these statements were reiterated and repeated frequently to Moore and the witness in Moore's presence. Testified that he visited the patients at the sanitarium established by Bellinger

(Testimony of Ira D. Bronson.)

and Crane in Seattle, and that there were perhaps fifteen or twenty or more patients present, and that they were playing cards and checkers and singing and were the jolliest and liveliest people the witness ever saw in his life. That he afterwards became connected with the company that was formed and had an interest in it and identified the contract entered into between F. P. Bellinger and George J. Crane and the Bellinger German Remedy Co., which was thereupon put in evidence as Plaintiff's Exhibit "P" and read to the jury:

Plaintiff's Exhibit "P."

This agreement made and entered into in duplicate this 16th day of March, 1893, by and between Dr. F. P. Bellinger and Geo. J. Crane, parties of the first part, and the Bellinger German Remedy Company of Seattle, State of Washington, party of the second part:

Witnesseth, that whereas the parties of the first part are the sole owners of formulas, prescriptions or receipts used by them in the compounding, making and preparing certain medicines for the treatment and cure of the diseases, ailments and disabilities with which those persons who are accustomed to the use of opium, morphine, cocaine, chloral, spirituous liquors and tobacco are afflicted, and which medicines are known and designated by the name of the German Remedy or German Remedy Cure;

And whereas, the party of the second part is desirous of purchasing said formula, receipt and prescription

(Testimony of Ira D. Bronson.)

otherwise known as the German Remedy formula or German remedy cure, and the exclusive right to compound, manufacture, use, vend, sell and deal in the same in any and all parts of the world, and the exclusive right to sell, state territorial and county rights to use the same:

Now, therefore, for the consideration hereinafter mentioned, the parties of the first part do hereby grant, bargain, sell, and convey to the party of the second part, its successors and assigns, both in law and equity, the said formula, receipt and prescription for the compounding, preparing and the manufacture of said medicines and the sole and exclusive right to compound, prepare, manufacture, use, vend, sell and deal in said medicines thereunder; and also all the knowledge and science which the parties of the first part are possessed of relative to the compounding, preparation, manufacture and use of said medicines and the treatment of patients thereunder.

And it is hereby agreed and understood that the party of the second part hereby purchases from the parties of the first part said formula, receipt and prescription otherwise known as the German remedy formula or German remedy cure, and the exclusive right to compound, prepare and manufacture said medicines, and the exclusive right to use, vend and sell and deal in the same, and the exclusive right to sell to any person or persons, people or peoples, corporation or corporations, country or countries, the right to use said medi-

(Testimony of Ira D. Bronson.)

cines, and all the knowledge and science of and in compounding and preparing said medicines, and in fact everything of value of whatsoever kind, character, nature or condition pertaining to medicine, and the manufacture and use thereof, whether printed or written or within the personal knowledge of the parties of the first part, or either of them, and they, the said parties of the first part, are not to nor do they reserve unto themselves or either of them for their own use or for any one else anything of value whatsoever but the whole thereof, together with the goodwill of the parties of the first part, is hereby conveyed to the party of the second part.

The consideration hereinbefore referred to for this conveyance and the right thereunder is as follows, to wit: The party of the second part hereby agrees to and hereby does sell, transfer and set over unto the parties of the first part, as their sole and separate property, all the capital stock of the party of the second part, to wit, the sum of one million dollars (1,000,000), which when issued and delivered to them shall be fully paid-up stock and nonassessable, and the same shall be shown upon the face of the certificates thereof, it being the understanding by and between the parties hereto that the right and benefit acquired by the party of the second part hereunder is of the full equivalent value of all the capital stock of the party of the second part.

This contract and agreement is not to interfere with the rights of any person or persons who have heretofore

(Testimony of Ira D. Bronson.)

purchased from the parties of the first part the right to use said medicines in the States of Washington, Oregon, Idaho, Iowa, or the county Larmie in the State of Colorado, but the party of the second part shall sell to such parties the necessary medicines required under the contracts made with such parties heretofore, but the party of the second part is to have and receive all the pay for the medicines to be delivered to such parties under said agreement.

In witness whereof the parties of the first part have hereunto signed their names, and the party of the second part has caused its president to sign his name, and the secretary to attest the same by his signature and to affix the corporate seal of the company hereto, ——. March, A. D. 1903.

DR. F. P. BELLINGER,
GEO. J. CRANE,
BELLINGER GERMAN REMEDY CO.,
By JAMES A. MOORE,
Its President.
Attest: C. G. AUSTIN,
Secretary.

Executed in the presence of:
JAS. N. SMITH.
W. A. KEENE.

State of Washington,
County of King,—ss.

Be it remembered that on this 22d day of March, in the year of our Lord one thousand eight hundred and

(Testimony of Ira D. Bronson.)

ninety-three, before me, the undersigned notary public, within and for said county and State, personally appeared Dr. F. P. Bellinger and George J. Crane, who are known to me to be the persons who are designated as parties of the first part in the foregoing agreement and who signed the same as such; also personally appeared James A. Moore and Charles G. Austin, president and secretary respectfully of the Bellinger German Remedy Company of Seattle, Washington, which is designated as party of the second part in the said foregoing agreement, and who executed the same as such, and each and every of said persons severally and collectively acknowledged to me that they signed and executed the said foregoing agreement of their own free will and accord, and said James A. Moore, as president, and said Charles G. Austin, as secretary, acknowledged to me that they executed said agreement as the free and voluntary act of said Bellinger German Remedy Company, all for the uses and the purposes therein expressed.

In witness whereof I hereunto sign my name and affixed my notarial seal the day and date last aforesaid.

WALTER A. KEENE,
Notary Public in and for the State of Washington at Seattle.

And testified that he was one of the trustees and stockholders of the corporation; that Moore and himself called at least three or four times at this institute and

(Testimony of Ira D. Bronson.)

talked with the patients; that he investigated fully for Mr. Moore, and that he traded land for a fifth of the capital stock of the corporation, and that he rated his land so exchanged at $10,000.

J. C. MOORE, being called and sworn on behalf of defendant, testified that he was a graduate physician and surgeon and had practiced medicine about eleven years, and had practiced in Seattle about four years and a half; that he was not a relative of J. A. Moore, the defendant, or in anywise connected with him; and further testified as follows:

Q. You are familiar with the compounding of drugs and the effect of drugs and compounds on the human system? A. Yes, sir.

Q. In medicine what is meant by a formula?

A. Why a formula is a combination of two or more drugs together to form some preparation.

Q. What about the necessity of quantities being specified in a formula?

A. It is always necessary to specify quantities.

Q. Supposing there was presented to you as a formula or a compound for the cure of certain disorders this, this in language: cinchona, popine, gentian, belladonna, neurasine, nux vomica, anodyne, coco, colombo, and glycerine. I will ask you whether or not you would consider that a formula? Are there any quantities given?

A. No. That would be impossible to put up any

(Testimony of J. C. Moore.)

such preparation. In the beginning, you have no quantities; and some of the drugs there are not drugs themselves, but combinations of drugs and proprietary or patent medicines; and then other drugs there are simply the crude name of which there are several preparations that are used as medicines.

Q. Supposing you would take certain quantities of each of those drugs and patent medicines mentioned, would they compound?

A. They would not compound. Unless I took enough, the dose of one would be so small that it would have absolutely no effect, while if they were large enough of the weaker drugs there are poisonous drugs there which would act as poisons.

Q. I wish you would tell me briefly the nature of each of these drugs and preparations. Cinchona?

A. Cinchona is made from Peruvian bark, of which the principal preparation made from cinchona is quinine.

Q. Popine or poppine?

A. Poppine is not a drug. I don't mean to say it is not a drug, but it is a preparation of opium which is supposed not to have the narcotic principle of opium.

Q. Gentian?

A. Gentian is made from the root of gentian, which is a bitter tonic, and it is largely used—that is, the tincture or fluid extract of the bark is generally used.

Q. Belladonna?

(Testimony of J. C. Moore.)

A. Belladonna is made from belladonna leaves; the active principle of which is atropine. It causes a dry secretion of the mouth, salivary glands.

Q. Neurasine?

A. Neurasine is a patent medicine, proprietary medicine. I don't think it is even patented, but it is a proprietary medicine put up by Adeas Chemical Company. It is a combination largely of the sedatives, the bromides—the three preparations of bromides and belladonna—the drug which is mentioned—also is contained in that, and also one or two other drugs.

Q. Nux vomica?

A. Nux vomica is made from the tree or shrub of the nux vomica tree, and the active principle in that drug is strychnine. Nux vomica is the crude drug.

Q. Anodyne?

A. Anodyne is simply a name. It means anything that will relieve pain.

Q. No drug by that name?

A. No drug by that name.

Q. Coco?

A. Coco is made from coco leaves, and the active principle in coco is cocaine.

Q. Colombo?

A. Colombo is made from the colombo roots, which is another of the bitter tonics.

Q. Glycerine?

A. Glycerine is a vehicle made from a decomposition of fats and oils.

(Testimony of J. C. Moore.)

Q. Then, as I understand, Doctor, in this preparation there is both morphine and cocaine?

A. There is.

Q. Doctor, suppose these drugs and patent medicines were mixed in any proportions of each, I will ask you whether or not it would make a compound or medicine or remedy that would cure the opium habit or the morphine habit or the liquor habit or cocaine habit or tobacco habit?

A. Well, if the dose was large enough, I think it would; but if it was smaller you would not only not cure the opium habit, but you would produce it, because popine contains—a teaspoonful dose of the preparation contains an eighth of a grain of morphine; and also you have the cocaine in the coco preparation.

Q. I will ask you whether or not any of these different ingredients which Dr. Bellinger mentions in his formula are unknown or secret preparations?

A. None of them.

Q. Do you find any secret German vegetable preparation there? A. None there; no, sir.

Cross-examination.

Q. (By Mr. KIEFER.) Doctor, could any two or more of these drugs which have been mentioned by Mr. Gilman, and proprietary preparations to be taken together in proper quantities and used with helpful results for the cure of these habits? I don't mean to take them all, but take any portion of them?

(Testimony of J. C. Moore.)

A. If you will state what proportion of these drugs, I might answer it.

Q. What I want to know is this: Would it be possible for a physician to use any two or more of these drugs in combination—of course, using his medical skill for the proper blending or combination of them, would it be possible for him to use any two or more of them with helpful results for the cure of the habits mentioned?

A. No. It would not help the habits mentioned, any of the preparations as they are stated—as it has been stated to me.

Q. You don't understand me. If he compounded them properly, having a physician's knowledge and skill on the subject, could he use any two or more of them—could he use any of them?

A. Nux vomica, rather the strychnine, which is the active principle of nux vomica, is largely used in the cure of the liquor habit, and by the proper use of it the habit is cured for a time at least in cases.

Q. Any others—any of these other drugs mentioned used in that?

A. Coco is used occasionally, a certain proportion of it.

Q. Any of the others?

A. I have forgotten just what all there were in there.

Q. (By Mr. GILMAN.) I will read them to you: cinchona, popine, gentian, belladonna, neurasine, nux vomica, anodyne, coco, colombo, glycerine.

(Testimony of J. C. Moore.)

A. Most of them there are tonics, and tonics are always used to tone up the system after the withdrawal of the liquor habit. But then belladonna—that is, belladonna as belladonna is never used; the active principle of it, the atropine, is used at times.

Q. (By Mr. KIEFER.) But of course it would have to be varied according to the idiosyncrasies of each individual? A. What?

Q. The treatment would have to be varied according to the peculiarities of each case, would it not?

A. Why certainly.

Q. You, Doctor, as a medical man, would not hesitate to say that there can be no specific put up which will apply to all cases, can there?

A. Yes, there are specifics for some cases.

Q. Which will apply to all cases I said.

A. Well, it would not be a specific if it applied to all cases. That would be a misnomer.

Q. You have to treat the liquor habit and the other habits mentioned here, you have to treat each case on its own merits, don't you?

A. You have to treat the patient.

Q. But you cannot put up any preparation which will answer for all cases each time?

A. No, you cannot.

Redirect Examination.

Q. (By Mr. GILMAN.) Then, if I understand you,

(Testimony of J. C. Moore.)

there could not be any formula that would cure these habits that I have mentioned?

A. No, sir, there is no known formula.

Q. Because you would have to individually treat a patient according to your judgment? A. Yes, sir.

Q. Now, then, is there or is there not any drug cure for these habits?

A. The history of all these cases is that after they have left the sanitarium where they are treated that they eventually drift back into their habits; it may be a longer or a shorter time in certain individual cases; but so far as any cure is concerned, there is nothing of the sort exists. If a man has will power enough after he has once straightened up from the thing to leave the drug alone, he is all right; otherwise he will eventually drift back into the use of the drug.

Q. The only cure then is to abstain?

A. Yes, sir.

Q. In case you could make a man abstain then there are certain drugs that can be given as tonics that will assist him?

A. Yes. After the withdrawal from either the opium or the liquor habit, the man is in a decidedly depressed condition and he must have the most powerful stimulants to overcome that condition. Strychnine is usually the sheet anchor in such cases.

Q. There is nothing about strychnine that is not known to the whole medical profession?

A. Nothing whatever.

(Testimony of J. C. Moore.)

Recross-examination.

Q. (By Mr. KIEFER.) Then, as I understand you, when these patients leave these so-called sanitariums and cures, who have undergone treatment for these habits that we have mentioned here, they are in a sense cured, that is, that they abstain from liquor or the drugs, as the case might be, for a time, and their ultimate abstention depends on their own will power?

A. On their will power entirely.

Dr. ALFRED RAYMOND was called and sworn on behalf of defendant, and plaintiff admitted that he was a qualified physician and surgeon, and thereupon he testified as follows:

Q. Then you are familiar with the compounding of drugs and their effect upon the human system?

A. Yes, sir.

Q. In medicine what do you mean by a formula?

A. It is the combining of a number of drugs together for some certain purpose.

Q. In certain quantities?

A. In certain quantities, whatever you wish to use in that particular case.

Q. Suppose this language was presented to you as a formula, what would you say about it: cinchona, popine, gentian, belladonna, neurasine, nux vomica, anodyne, coco, colombo and glycerine?

(Testimony of Dr. Alfred Raymond.)

A. Well, that is a double-barreled shotgun preparation.

Q. Do you think you could compound it?

A. I never did.

Q. Do you think any druggist could compound it—I mean if it was sent up to you as I have read it?

A. It is possible to put them all together. Anodyne —there is no medicine by the name of anodyne that I know of.

Q. Doctor, have you had any experience in the treatment and attempted cure of the morphine, cocaine, liquor and tobacco habits?

A. I have had some experience with morphine and cocaine habits, more than the liquor habit.

Q. Doctor, I will ask you what value you would place upon a compound of these different drugs and patent medicines that I have mentioned as a specific for the cure of the morphine, cocaine, liquor and tobacco habits?

A. Why, it is a thoroughly, absolutely, unscientific mixture, in the first place. In the second place, there are two drugs there that contain active principles of that which you want to cure—popine there is a proprietary mixture which contains morphine, and that is one principle there of the coco, concaine is prepared from that. So that you are really giving in the mixture both morphine and cocaine.

Q. And what would be the effect of giving to one addicted to the morphine habit, morphine?

(Testimony of Dr. Alfred Raymond.)

A. I think it would just lure him into the opinion that he was being cured when he was not.

Q. And would it be the same, giving coco to a cocaine fiend? A. Sure.

Q. That is, you could drug him along by giving him—

A. (Interrupting.) He would think he was cured when he was not really being cured.

Q. What secrecy is there about any of these drugs? Are they secret preparations, or anything here that is not known to the medical profession?

A. Some of them are proprietary. I mean by that they are ready-prepared. You could write a prescription for neurasine, and I think the formula of neurasine is on the bottle, but the word "neurasine" does not mean anything; it is a coined word just for the name of that combination of drugs, some half a dozen, I think. Popine is another coined word for that mixture.

Q. Doctor, suppose you could mix this stuff together in any quantities; I will ask you whether or not in your opinion as a medical man it would cure any of the habits I have mentioned or have any beneficial effect on them?

A. Well, I don't believe in the medical cure of the liquor habit.

Q. You can answer my question—would you prefer to have them separated—the different habits separated?

A. Sure.

Q. If these things could be mixed together in any quantities what, in your judgment, would be the effect

(Testimony of Dr. Alfred Raymond.)

of the administration of the compound upon one addicted to the morphine habit?

A. Well, there are so many drugs there and they would have such different actions it would be pretty hard to tell what you would get when you put them together. Strychnine, which is a tonic and a stimulant; you have all the bromides, which are depressing. Those are opposite actions. You have morphine, which is another quieting drug, and you have cocaine, the same; and you have the gentian and the colombo, which are—and bitter tonics. You see they are all opposing forces. I don't know what results you would have giving of that whole thing.

Q. As a matter of fact, doctor would it not be nonsensical to give such stuff as that?

A. It is perfectly ridiculous.

Q. Would it be the same as to the cocaine habit, the liquor habit and the tobacco habit?

A. I should think so.

Cross-examination.

Q. (By Mr. KIEFER.) Doctor, combinations could be made of two or more of these drugs which would be beneficial in the cure of these habits?

A. You could pick out from that number of drugs there things that would be compatible and be useful.

Q. And it would not necessarily mean that they must all be used for those purposes?

A. For a particular purpose?

(Testimony of Dr. Alfred Raymond.)

Q. Yes. A. No, sir.

Q. For the cure of these habits you would not undertake to use them all on the same patient?

A. No, sir—all at once, with that mixture?

Q. Yes. A. No, sir, I would not.

Q. No medical man would who understands his business? A. I don't think so.

Q. He would pick out what he needs and make combinations according to the peculiarities of the individual case?

A. Yes, there are drugs there that he could use beneficially.

Direct Examination.

Q. (By Mr. GILMAN.) If he had to pick and choose according to the particular patient he would not have any formula, would he? A. No, sir.

IRA D. BRONSON, recalled on behalf of defendant and testified that he observed Dr. Bellinger's method of administering the remedy in question to patients and that he had it "sent from their laboratory, as they called it, at Council Bluffs, and it came in bottles, numbered 1, 2, 3 and 4, and a new patient, for instance, for the cocaine habit, or the morphine habit he would take out a certain amount—I don't remember now; it is so long ago—a certain amount for the first week, and then the next week he would take out of the next bottle a

(Testimony of Ira D. Bronson.)

certain amount, then the next week out of the next bottle and so on; whether it began at No. 1 or No. 4 I don't remember. But the patients all received the same kind and the same amount of that remedy. I watched closely. I was watching it carefully to see and learn about it if I could, and it was taken out of those bottles, as I say.

Q. Then there was no varying for different patients?

A. No, sir."

J. A. MOORE, the defendant, sworn on his own behalf, testified as follows:

That he came to Seattle in 1887 and that this has been his home ever since; that in 1893 he went east on this business in the summer and was back again that fall, and was in Seattle once or twice a year practically up to 1897, at which time he came back and has been here ever since.

Q. Can you state definitely the time in 1897 that you returned? A. Not exactly, but in the fall of 1897.

Q. Can you fix it more definitely than that?

A. Well, it would be between September and December, possibly in October; I think along October or November, along in there.

Q. Now, then, Mr. Moore, how did you happen first to meet Dr. Bellinger and Mr. Crane?

A. In the spring of 1893, I don't remember the month, Mr. C. G. Austin came to me; told me that some

(Testimony of J. A. Moore.)

acquaintances or friends of his were in the city and were the owners of a remarkable specific or cure for all drug habits and liquor and tobacco habits, and wished me to investigate it with the idea of becoming interested in it. Not being a physician or knowing anything about such things, I was not very much interested in it, and did not even care to take the time to investigate the remedy; but he was very persistent; and he finally brought to my office Dr. Bellinger and Mr. Crane. They were sanguine over what they had—

Q. (Interrupting.) Well, now, Mr. Moore, instead of giving the conclusion, I wish you would state as nearly as you can the—if you cannot state the exact language state the substance of what Dr. Bellinger and Mr. Crane told you at that first interview when they came to your office.

A. They claimed to me that they had an absolute specific for the drug and liquor habits. Dr. Bellinger told me that his father, who had been a surgeon in the German army, had discovered a remedy first for the alcohol habit and by perfecting it had developed a sure cure for all drug habits; that this remedy had been handed down to him by some process, and he was the sole owner of it; that without question it was a sure cure under all conditions and under all circumstances for all the habits mentioned. I asked some friends, physicians, about it; their answer was—

(Testimony of J. A. Moore.)

Mr. KIEFER—(Interrupting.) I object to what the physicians told him.

(Objection sustained by the Court.)

Q. Go on.

A. It would seem from the information I received that if he had such a discovery it was a valuable thing. I investigated with the assistance of my friend, Judge Bronson, and they convinced us at the time that they had a sure cure for all these habits.

Q. Now, I will ask you if you subsequently entered into any business transactions with Bellinger and Crane with reference to acquiring the formula for this remedy, and if so what? State fully the details of the business which you did with them. * * *

A. These gentlemen interested several parties in Seattle; I think I can recall them. One was Angus Mackintosh, then in the Merchants' National Bank; Mr. C. G. Austin, Judge Ira Bronson and myself, in this remedy, and a company was organized to manage the business. I was to have a certain interest in the stock —a certain interest in the company, and Mr. Bronson was, I think, to have a fifth interest. I do not believe I ever received the stock. And I was to give my note for five thousand dollars, due, I think, in six months, which did. Messrs. Crane and Bellinger had a sale on for the state of California at the time, they claimed, for $20,000. This sale was practically all made excepting they had to go down there to demonstrate the value of

(Testimony of J. A. Moore.)

the remedy, which they said if it went through the money would be in and my share of it would be enough to pay the note before it was due. If they made the sale the money was never turned anywhere excepting to themselves, as it never came in to the company. I went into the business with them in good faith, believing that they had a specific and a sure cure for all the drug habits and the liquor habit. I entered into it in absolute good faith, as well as did the other gentlemen in the company. I went east to Massachusetts, accompanied by Mr. Bronson, and with positions secured offices were opened up to prove the efficacy of the remedy. We first opened in Massachusetts and were there for some time. * * * We only met with partial success there. Dr. Bellinger insisting that it was the physicians' fault that the cures were not made; and we finally asked him to come on himself—which he did—on to Boston; but he was partially successful only. He then suggested that we try in Chicago, and we opened a sanitarium in Chicago, I putting in up to that time over ten thousand dollars in cash. But that was only partially successful, and was left in the care of physicians there. I remained with the company perhaps a year and a half in various attempts to make the thing a success; but after that length of time I was convinced that it could not be made a success, and I abandoned it, with the loss of a great deal of money.

Q. Now, Mr. Moore, when you gave that promissory

(Testimony of J. A. Moore.)

note what, if any, reliance did you place in these representations that had been made to you by Crane and Bellinger?

Mr. KIEFER.—I object, if the court please. He can state what was said and done. I object to the conclusion of the witness.

(Objection overruled by the Court and exception allowed to plaintiff.)

(Question read.)

A. I believed in them fully.

Q. What was the reason for your giving the note?

A. My faith in the statements that they made.

Q. When did you first learn, Mr. Moore, that Dr. Bellinger did not have any formula at all?

Mr. Kiefer.—I object to that, if the Court please, as incompetent and irrelevant.

(Objection overruled by the Court and exception allowed to plaintiff.)

A. Not until this case was commenced.

Q. Was it this case or the former case in the superior Court?

A. The case that was in the Superior Court; but it is the same matter.

Q. How did you then learn it, Mr. Moore?

A. From the hearing of a deposition read of Dr. Bellinger's.

Q. When did you first learn that this pretended formula of his did not contain any secret drugs or remedies?

(Testimony of J. A. Moore.)

Mr. KIEFER.—We make the same objection to that.

(Objection overruled by the Court and exception allowed to plaintiff.)

A. I did not know what was in the remedy until this formula was given in the deposition.

Q. Now then, when did you learn that this note that you had given to Crane for himself and Bellinger had been transferred to the Citizens' State Bank of Council Bluffs, Iowa?

A. Prior to its—or about the time it matured.

Q. Did you have any correspondence or conversation with anybody connected with that bank in reference to it? A. Yes, sir.

Q. Now then, I will ask you in your conversations with Mr. Hannan, what he stated to you in reference to the manner or method in which the bank had acquired the notes? A. Mr. Hannan stated to me—

Mr. KIEFER.—We desire to object to that. It is wholly incompetent, irrelevant and immaterial what Mr. Hannan may have stated. Suppose he had paid this note he could not recover the money back. They were not dealing in any relation of trust.

The COURT.—I will allow Mr. Gilman to prove what he outlined in his opening statement.

(Objection overruled by the Court and exception allowed to plaintiff.)

A. Mr. Hannan said to me personally, as well as in correspondence—

(Testimony of J. A. Moore.)

The COURT.—(Interrupting.) Omit the correspondence; tell what he said personally.

A. Personally that the note had come into the possession of the bank in the ordinary course of banking business; that they had discounted the note and paid the full face value of the note, and that he would look to me for the payment of the note.

Q. What, if anything, did he say to you about any knowledge of the fraud that had been perpetrated upon you?

Mr. KIEFER.—I object, if the Court please.

(Objection overruled by the Court and exception allowed to plaintiff.)

Q. As to whether or not when they took the note they had any knowledge?

A. I don't think there was anything said at that time, Mr. Gilman.

Q. Just stated he took it in the regular course of business?

A. The regular course of business; bought the paper and paid for it.

Q. How many times did you renew the note, Mr. Moore? A. Two or more.

Q. Until it finally got down to these notes which are in suit here, being given as renewal notes?

A. Yes, sir.

Q. Now then, I will ask you when you first learned that the bank had not acquired this note in the regular

(Testimony of J. A. Moore.)

course of business and had knowledge of the circumstances under which you gave the note?

A. Not until Mr. Hannan's deposition was taken and read in a former trial of this case.

Q. That is the trial in the Superior Court?

A. Yes, sir.

Q. Was that before or after these notes were given which are the subject of this suit? A. It was after.

Q. What induced you to renew the note, Mr. Moore?

Mr. KIEFER.—I object to that, if the Court please, as incompetent, irrelevant and immaterial.

(Objection overruled by the Court and exception allowed to plaintiff.)

A. I was led to believe that the bank had purchased the notes in good faith; that no matter what my impressions were as to the original deal; that if the bank became the possessor of them as an innocent purchaser there was no recourse for me but to pay the notes. I kept renewing the notes expecting to do so.

Q. Now, certain letters of yours have been introduced in evidence here; I want to ask you whether these letters were written before or after you became possessed of the knowledge that the bank knew of the circumstances of your giving this note at the time it had purchased it?

A. Those letters were all sent—written by me prior to my knowledge of any action on the bank but good faith in securing the note. Mr. Gilman, may I be per-

(Testimony of J. A. Moore.)

mitted to make a statement in regard to the remedy that I omitted to make in my former answer?

Q. Certainly.

A. One of the strong points that was made in the statements by Dr. Bellinger and Mr. Crane in regard to the value of the remedy as a cure for the drug habit, was that it absolutely contained no morphine or opium in any form whatever. I omitted to make that statement.

Q. Did you witness Dr. Bellinger treat any patients that you had at any place? A. Beg pardon.

Q. Did you witness Dr. Bellinger's method of treatment of the patients at any place? A. Yes, sir.

Q. State what it was.

A. He had his medicine put up in certain bottles which he had numbered from 1 to 5. These remedies were given to the patients out of these bottles, and the remedy was the same for all patients; that is, for the drug habits the remedy that was given out of these bottles from time to time and the whole class that they had, or the whole number that was under treatment; there was no change of the remedy. He put it up wholesale and it was given to them either by Dr. Bellinger or by the physicains under him.

Q. That was sent on from Council Bluffs by wholesale, was it? A. Yes, sir.

Q. Who was this Mr. Hannan of whom you spoke; what was his relation to the Citizens' State Bank?

A. He was cashier of the bank at that time.

(Testimony of J. A. Moore.)

Q. What reliance, if any, did you place on his statement that he made to you regarding the manner in which the note was acquired? A. I believed them.

Q. About what date was it that this case was tried in the Superior Court?

Mr. KIEFER.—September 8, 1903; September 8 and 9, 1903.

Mr. LYTER.—Let the record show it is agreed.

Cross-examination.

Q. (By Mr. KIEFER.) Mr. Moore, you say you returned here you think in October or November, 1897?

A. Yes, sir.

Q. Do you remember the circumstances of going to Mr. McAllister's house to live? A. Yes, sir.

Q. How soon did you go there after you came to the city?

A. I don't know. When I came back first I went to Mr. Bronson's residence—Mr. Ira Bronson's and lived with him some little time, Mrs. Moore and I, and I don't remember just how long after it was, Mr. Kiefer.

Q. It was not more than a couple of days though, was it? A. Oh, yes; oh, yes; possibly a few weeks.

Q. Possibly a few weeks? A. Yes, sir.

Q. Now, it is a fact then that you went to Mr. McAllister's to live on the 14th of December, 1897?

A. Well, I don't know.

Q. You don't dispute his statement on that point?

(Testimony of J. A. Moore.)

A. No, sir. If he states that I went to his house on the 14th of December, I have no doubt but what that was the date, Mr. Kiefer.

Q. And you were not in the city more than a few weeks prior to that time? A. No, I don't think so.

Q. Sir? A. No, sir.

Q. Three weeks?

A. I don't know; it might have been two; it might have been four; it might have been longer. I don't remember, Mr. Kiefer.

Q. But you don't claim to have been here earlier than October? A. No, sir, I don't think so.

Mr. KIEFER.—I want to cross-examine the witness upon that point further—I omitted to bring something with me and I want to use it on the cross-examination of the witness on this point.

Q. And what had you been doing before you returned to the city; where had you been?

A. I had been kind of living in my trunk all over the country.

Q. I mean that particular year you had been in Mexico, hadn't you? A. Yes, sir.

Q. You had been in Atlanta, Georgia?

A. Yes, sir.

Q. When did you go to Mexico?

A. I went to Mexico, I think it was the latter part of 1895.

Q. I mean in the year 1897. Did you remain there continuously from 1895 to 1897?

(Testimony of J. A. Moore.)

A. Oh, no. No, I was back here once after I was in Mexico; possibly twice—back in Boston, back in Chicago, and back to Mexico again; left Mexico in the summer of 1897.

Q. What time in the summer?

A. It must have been July or August.

Q. How long did you remain there?

A. In Mexico?

Q. Yes.

A. I was there from seventeen to twenty months I should think.

Q. No, I mean in the summer—in the year 1897; what time did you go to Mexico in the year 1897?

A. Well, I was in Boston in the spring of 1897, and back into Mexico again. I was at Chihuahua.

Q. You went to Mexico about the month of June, didn't you? A. Well, I don't know, Mr. Kiefer.

Q. How long did you remain there?

A. Well, I had been there for seventeen or eighteen months.

Q. At that time how long did you remain there in the summer of 1897?

A. I don't know, Mr. Kiefer; a few months I think.

Q. Two or three months? A. I should judge so.

Q. Where did you go from there?

A. Came up to El Paso.

Q. How long did you remain there?

A. Only a few days.

Q. Where did you go to then?

(Testimony of J. A. Moore.)

A. To Atlanta, Georgia.

Q. How long did you remain there?

A. I was sick there. I was there perhaps six weeks.

Q. And where did you go to from there?

A. Came up to Denver.

Q. How long did you remain in Denver?

A. I was sick again there. I was there perhaps two or three weeks.

Q. And came back here to Seattle in December then?

A. No, it was earlier than December, Mr. Kiefer.

Q. You think it was?

A. Yes, sir, I am quite sure it was.

Q. You say you went into this cure of Dr. Bellinger's in 1893? A. In 1893, yes, sir.

Q. What time did you meet Dr. Bellinger and Mr. Crane in this connection? A. In the spring of 1893.

Q. Do you remember the date? A. No, sir.

Q. You do not? A. No, sir.

Q. You made investigation of this cure for some time before you went into the deal with them?

A. Yes, sir. I thought I was quite smart.

Q. You went to the institute and observed the patients? A. Yes, sir.

Q. You visited there frequently?

A. Yes, quite a number of times.

Q. And you also consulted physicians with regard to it? A. I did.

(Testimony of J. A. Moore.)

Q. And you had Judge Bronson as your attorney to go with you and assist in the investigation?

A. The Judge did not help me as an attorney; he was more of a friend or counsellor in the matter. But he investigated too.

Q. Now, Mr. Moore, you relied a good deal upon the cures which you observed there, didn't you?

A. Yes, sir, I believed that they were doing good work there.

Q. And they were doing apparently a prosperous business?

A. Yes, sir. From their statements they were making money very fast.

Q. Well, they had a large number of patients?

A. Yes; seemed to have.

Q. Now, finally a corporation was formed was it not? A. Yes, sir, I think so.

Q. I will show you certain articles of incorporation here; look at them and see if those are the articles of incorporation of the Ballinger German Remedy Co.

A. Why, I could not remember, Mr. Kiefer, whether these are the articles or not, but I have not any reason to doubt but what they were.

Q. You signed articles as one of the incorporators?

A. I expect I did; I don't remember now, but I believe I did.

Mr. KIEFER.—We offer in evidence these articles.

(Document received in evidence and marked Plaintiff's Exhibit "Q," which is as follows:)

(Testimony of J. A. Moore.)

Plaintiff's Exhibit "Q."

ARTICLES OF INCORPORATION OF THE BELLINGER GERMAN REMEDY COMPANY.

This is to certify that we, F. P. Bellinger, George J. Crane, Charles G. Austin, James A. Moore, Ira D. Bronson and Angus Mackintosh, citizens of the United States of America and residents of the city of Seattle in King county and State of Washington, being desirous of forming a corporation pursuance to and in conformity with the laws of said state, do hereby make and subscribe and acknowledge in triplicate the following Articles of Incorporation in writing.

Art. I.

The corporate name of this company shall be the "Bellinger German Remedy Company."

Art. II.

The objects and purposes for which this corporation is organized is to compound, manufacture, use and vend medicines in any and all of the civilized countries of the world; to sell and dispose of rights to use and vend said medicines; to establish and operate drug stores and pharmacies and to carry on a general drug business, either wholesale or retail in any part of the world; to establish, maintain and operate medical institutes and hospitals in any state, territory or country, and to purchase and hold the necessary real estate upon which to build and erect the same; and to do and perform any and all kinds of business pertaining to

(Testimony of J. A. Moore.)

pharmacy and pharmaceutics; also to purchase, hold and sell such other kinds of property both real and personal as the corporation deems for its best interests, also to mortgage the same if it desires.

Art. III.

The capital stock of this corporation shall be one million (1,000,000) of dollars, which shall be divided into ten thousand shares of one hundred (100) dollars each.

Art. IV.

The time of existence of this corporation shall be for the term of fifty (50) years, which shall commence on the day of the date of these articles.

Art. V.

The trustees of this corporation shall be six in number and the names of those who are to manage the concerns of this corporation for the first six months are F. P. Bellinger, George J. Crane, Charles G. Austin, James A. Moore, Ira D. Bronson and Angus Mackintosh.

Art. VI.

The principal place of business of this corporation shall be in the city of Seattle in the county of King and State of Washington, but branch offices may be established at such other places as the corporation may select.

In witness whereof we have signed these articles in triplicate at said city of Seattle on this fifteenth day of

(Testimony of J. A. Moore.)

March, in the year one thousand eight hundred and ninety-three.

JAMES A. MOORE.
F. P. BELLINGER.
GEO. J. CRANE.
C. G. AUSTIN.
IRA D. BRONSON.
ANGUS MACKINTOSH.

Executed in presence of:

C. W. MATRONS.
A. ROBINSON.

State of Washington,
County of King,—ss.

Be it remembered that on this fifteenth day of March, A. D. 1893, before me, the undersigned, a notary public in and for the State of Washington, personally appeared F. P. Bellinger, George J. Crane, Charles G. Austin, James A. Moore, Ira D. Bronson and Angus Mackintosh, both personally known to me and known by me to be the identical persons named in and who made and subscribed the foregoing articles of incorporation, and they did severally each for himself and not for the other, acknowledge to me that they made and subscribed the foregoing articles of incorporation freely and voluntarily and for the uses and purposes therein expressed.

In witness whereof I have hereto set my hand and

(Testimony of J. A. Moore.)

affixed my notarial seal the day and year in this certificate first above written.

C. A. MATRONS,
Notary Public in and for the State of Washington, Residing at Seattle, Washington.

Q. Mr. Moore, after the corporation was formed, as its president did you sign this contract which I show you between F. P. Bellinger and George J. Crane (showing Plaintiff's Exhibit "P" to witness)?

A. Which is the contract, Mr. Kiefer? Is this it here? I believe that is my signature, Mr. Kiefer.

Q. As president of that corporation, the Bellinger German Remedy Company?

A. It is so indicated.

Q. Mr. Moore, this contract was entered into after the corporation was formed?

A. Yes, I should judge so.

Q. And that evidenced the contract between the corporation and Dr. Bellinger and Mr. Crane?

A. I presume so. The formula, of course, was never given to the company; we never got that formula.

Q. Now, Mr. Moore, you in the course of your inquiries and investigations learned what states they had sold—the state rights, the local rights that they had sold for the use of this remedy? A. Yes, sir.

Q. You had nothing to do with this local institute here? A. No, sir.

Q. How long did you say this note was to run for?

(Testimony of J. A. Moore.)

A. My recollection is six months.

Q. Was it not a ninety-day note?

A. Well, that is possible. That is possible. I am not clear on that. It may have been ninety days; possibly six months.

Q. And that note was given after the corporation was formed and after the contract was entered into?

A. That I don't remember, Mr. Kiefer, whether it was before or after.

Q. You don't remember? A. No, sir.

Q. You would not pretend to say?

A. No, sir.

Q. Mr. Moore, when this note matured you went on to Council Bluffs?

A. I went to Council Bluffs via San Francisco, I think. Crane and Bellinger were then operating in San Francisco proving their cure which they claimed they had sold the state for twenty thousand dollars, and I was led to believe that there would be enough out of that sale down there to pretty near take care of that note. Much to my surprise, I never got a dollar out of the State of California. I think I called at Council Bluffs on my way east possibly, I don't remember as to that; but I interviewed Mr. Hannan about the renewal of the note.

Q. Do you remember these circumstances? Do you recollect going to San Francisco and finding out that their sale had fallen through because of the failure of a bank? A. In California?

(Testimony of J. A. Moore.)

Q. Yes; one of the San Francisco failing and involving the parties to whom this sale was made or about to be made?

A. I don't recall why the sale fell through, Mr. Kiefer, if it did fall through. They were there—oh months afterwards.

Q. Yes, they remained there. But I ask you this question: Is it not a fact, Mr. Moore, that you went down to San Francisco some time after giving this note and entering into this deal here, where Dr. Bellinger was and Mr. Crane, and that you learned that they had made a sale of California, and the money was on deposit in one of the banks there by the people to whom the sale was to be made, and that the failure of the bank a day or two before the consummation of the deal prevented its consummation?

A. I remember, Mr. Kiefer, that there was something—some hitch in some part of the trade, but they had taken it up with other parties and expected to consummate the deal.

Q. Afterwards took it up with other parties?

A. Yes, sir; but I am not clear on that.

Q. Do you remember in San Francisco, on the occasion of that visit, making a very strenuous appeal to Crane to return to you your five thousand dollar note?

A. I don't remember much on that point, Mr. Kiefer.

Q. Have you any recollection on that subject?

A. He was so positive that the sale of California would take care of that note when it matured, that is,

(Testimony of J. A. Moore.)

pretty near enough of it—at least my share would have been four thousand dollars, that it is possible that I asked him for an extension of the note. I don't think that I asked him to return the note.

Q. Well, now, then didn't you have this conversation with him: didn't you ask him to return to you that note, and tell him that you were very much embarrassed; you wanted the note back, and get out of the thing; and he told you it was impossible because he had turned the note over to the Citizens' State Bank of Council Bluffs, his home bank?

A. Why, I don't recall, Mr. Kiefer; it is so many years ago that that phase of the subject has not entered my mind perhaps for thirteen or fourteen years.

Q. And didn't he tell you then further in that conversation, that you had better get in and try to push the remedy, and that you then made up your mind to get in and do your share towards exploiting it and try to get it in that way?

A. It is possible I did; I don't remember.

Q. In going into this trade you relied very largely upon the profits of selling state rights to use the medicine, didn't you?

A. That was the business proposition that was submitted to us, where the money was, was to sell out the state rights after demonstrating their value.

Q. And that was the form that your exploitation of this remedy assumed, was it not? A. Yes, sir.

(Testimony of J. A. Moore.)

Q. You went to Boston and opened an office?

A. Yes, sir.

Q. On the subject of the renewal of this note I will show you a letter dated November 28, 1893, and ask you if you wrote it?

A. Yes, sir, that is my letter.

Q. Written to Mr. Crane? A. Yes, sir.

Q. That was after you had opened the Boston institute? A. Yes, sir.

Q. You had had some considerable experience with that at that time?

A. Well, I was just getting started.

Mr. KIEFER.—I offer this letter in evidence, if the Court please.

(Letter received in evidence without objection, marked Plaintiff's Exhibit "R," and read to the jury, and which is as follows:)

Plaintiff's Exhibit "R."

Boston, Mass., Nov. 28, 1893.

Dear Mr. Crane,

Yours of the 21st to hand and contents carefully noted. In reply would say in regard to the note at Council Bluffs that they are not going to bother you in any way. They have accepted new notes from me made payable to them and will return the note made payable to you at once thus releasing you. The new notes given do not mature before Jan. 21st, so that are fixed for the present. Before that date we will have several

(Testimony of J. A. Moore.)

states in New England sold. I have four states well under way, including N. Y. to friends of ours for $75,000 cash. Also have parties working up a syndicate in Chicago at the same price. I have telegraphed to Dr. B. this morning to cash dft on me and come at once. I am opening up an immense business here and must have his assistance. I can do the business part of it but have felt that in some ways Dr. B. could help out amazingly. In fact must have him for awhile. I have been in correspondence with some friends in Texas who tell me that they will buy Texas just as soon as we can come and make a few cures. I have found Bro Crane that the less we talk the liquor cure the better we do. The country has been burned to death by liquor cures and a new cure for morphine seems to take all right. Dont get discouraged because I am going to make you some money whether you sell Cal. or not. With best wishes and kind regards,

I remain,

Yours very sincerely,

J. A. MOORE.

Q. Mr. Moore, when you renewed this note which you speak of in that letter, you got back from the Citizens' State Bank of Council Bluffs the note which you had given originally; that note was delivered to you—the note, the five thousand dollar note which you had given to Crane; that was then surrendered to you by the bank?

A. I presume it was; I don't remember, but it ought to have been if it was not.

(Testimony of J. A. Moore.)

Q. You are too much of a business man to give a new note and leave the old one in the hands of the party you renew it to? A. I think so.

Q. You would hardly do that. That renewal note was, as you state there in the latter, payable directly to the bank? A. I fancy it was.

Q. And you split it up into two or three notes at that time, didn't you?

A. No, I think that was later, Mr. Kiefer.

Q. You speak in the letter of "notes"; now did you split it up at that time or not; what is your best recollection?

A. It is possible a note was given for the interest; but I don't know—it may have been split up at that time, Mr. Kiefer.

Q. But at any rate you did get back your note payable to George J. Crane and by him endorsed, and that was surrendered to you, and you gave notes payable directly to the Citizens' State Bank?

A. Evidently so.

Q. Now, Mr. Moore, you continued in this business for how long? A. Over a year.

Q. I show you a letter dated March 3, 1895, and I ask you if you wrote that letter? A. Yes, sir.

Q. You wrote that letter to Mr. Crane?

A. Yes, sir.

Mr. KIEFER.—If the Court please, we offer in evidence the letter just identified by Mr. Moore previous to the adjournment.

(Testimony of J. A. Moore.)

Mr. LYTER.—What is the purpose of the offer?

Mr. KIEFER.—The purpose of the offer is to show the length of time that Mr. Moore engaged in this business, and the nature of the success made by him, and the interest taken in it by him. It is part of his cross-examination. For all purposes—for anything that may be shown by the letter.

(Letter received in evidence marked Plaintiff's Exhibit "S," and read to the jury, as follows:)

Plaintiff's Exhibit "S."

Denver, Colo., March 3rd, 1895.

Geo. J. Crane, Esq., Fort Smith, Ark.

Dear Sir,

Your favor of a recent date received on my return to the city Saturday. I wrote you quite fully to Council Bluffs, but thinking that you might not return soon concluded to write you a few lines to Fort Smith.

You state that you have given an option on the whole world for $100,000. This seems rather low when you take into consideration that it will not pay out the price of the stock lying in escrow in Seattle, and to own said stock the different shareholders would have to pay for same out of their pockets—and the world sold.

In regard to your statement that you had to deed Cal. for debt does not sound very good when you stated to us in order to get us to take hold of the scheme that

(Testimony of J. A. Moore.)

you had a standing offer for Cal. of $30,000 cash. This statement was one of the inducements that influenced Mr. Bronson and myself, and I presume Mr. Austin too. In regard to Texas would state that I have given a deed to that state and the company will ratify what has been done by me. You might go to Texas and cause a little dissatisfaction but it would do you no good whatever and you would be out your expense. I have given an option on Missouri, Ohio and Pennsylvania and six southern states, and I believe the option on Mo. will be taken up. It calls for $20,000 cash on May 1st and the party making sale gets $25,000. Now, Mr. Crane, there is no profit in us getting to fighting as it will only ruin all prospects of us ever getting anything out of the business. If we get to scrapping we will only destroy each other. I have not made a dollar out of the thing, in fact have lost a barrel of money and hate to let go until we get some out. Your option on the world for $100,000 of course is a bluff and I want you to help me on that Missouri deal. While there is $25,000 in sight we must make up our minds to be sweet to each other long enough to get that money even if we again go to scrapping soon as the deal is closed. Dont you think so? The parties who are buying Mo. are principally Denver people and I am quite positive the deal will go if we can pull together for a brief period. I got knocked out in N. O. by parties who looked into the record of sanitariums already established and other reports not com-

(Testimony of J. A. Moore.)

plimentary to the Co. Write me here at once in regard to the Missouri deal and oblige,

Yours very truly,

J. A. MOORE.

Mr. KIEFER.—I offer a letter written under date of Seattle, July 20, 1893.

Q. Did you write that letter (showing letter to witness)? A. Yes, sir.

Mr. McKAY.—We desire to interpose this objection: that this is between two officers of the company in a communication between an officer of the company to another officer of the company, and it cannot be taken as evidence in favor of the plaintiff, nor as evidence against the defendant in favor of the plaintiff. In other words, it is a matter between third persons and not at all between the plaintiff and defendant, or between the defendant and the predecessor in interest of the plaintiff.

Mr. KIEFER.—It is a declaration of this witness on the stand, if your Honor please, with reference to this matter; and it is not an official letter; it is signed by him in his individual capacity. I submit it is inadmissible as showing what he was doing with this very business.

The COURT.—Now, Mr. Kiefer, I will instruct that if this business was a fraudulent business, and Mr. Moore was engaged in it with full knowledge that it was fraudulent, and his participation would not give any validity

(Testimony of J. A. Moore.)

to the alleged consideration—if the consideration was in fact an illegal or a valueless consideration—Mr. Moore's voluntary participation in the fraud, if he did, would not change the relative value of the consideration so as to make this note valid. I do that on the ground is not as you contended yesterday, that a voluntary payment of the note would bind Mr. Moore so that in a suit to recover back the money he would not be entitled to recover it back. While that is true it is different where he is defending; he could not ask a court of equity to help him recover against a co-conspirator in a fraudulent enterprise; neither can anyone who is attempting to enforce against him a right founded upon a fraudulent enterprise prevail in a court of law; because the Court will leave them alone where they have placed themselves.

Mr. KIEFER.—This letter is offered, if your Honor please, with showing Mr. Moore's then opinion of the value of what he had purchased, and of what he was doing with it. The allegation here is that it was utterly worthless, although we contend that is not an issue tendered by those pleadings, but this letter is offered to show how he dealt with it.

Mr. GILMAN.—We will concede that for a very long time, Mr. Kiefer, Mr. Moore did have faith in this remedy.

The COURT.—The objection is sustained on the

(Testimony of J. A. Moore.)

ground that it is taking up the time of the Court unnecessarily.

(Exception allowed to plaintiff.)

The COURT.—If you have any letter there in which Mr. Moore makes a contradiction—contradicts his testimony as to the representations that were made, that would be admissible; but anything that he may have said indicating that he was trying to carry out the scheme that he says he went into, is just taking time for nothing. He has testified fully and completely that he went into that scheme.

Q. That is your signature to that letter is it, Mr. Moore? A. I think so.

Mr. KIEFER.—I offer in evidence a letter dated Chicago, May 7, 1894, which I presume the Court wishes to see before the ruling upon it.

Mr. McKAY.—We object to it, if your Honor please.

(Objection sustained by the Court and an exception allowed to plaintiff.)

(Last two letters are marked respectfully Plaintiff's Exhibit "T" and Plaintiff's Exhibit "U," offered and refused, as follows:)

Plaintiff's Exhibit "T."

Seattle, Wash., July 20, 1893.

Dear Mr. Austin,

We arrived here in due season and have attacked Boston in dead earnest. We have several parties inter-

ested already and I sincerely believe that we will close a deal inside of 10 days. There are dead loads of drunks in this city and we have a class of about 15 ready to take the treatment just as soon as we open up. I wired you to send medicine as I am afraid the folks in Frisco might be slow and I can't understand why you should wire back that you have no medicine. I hope that such is the case for it shows that institutes are using medicine. Cheer up, Bro Austin, we have a grand thing and we will make some money very soon. I believe we will sell Mass. before Crane gets Cal. sold. With best wishes and kind regards, I remain,

Yours very truly,

J. A. MOORE.

Plaintiff's Exhibit "U."

Chicago, May 7, 1894.

Mr. Geo. J. Crane, Donahue Bldg., San Francisco, Cal.

My dear Friend,

Your favor of a recent date to hand and in which you state that the medicine has at last arrived for which I am truly thankful. I dont see how it is possible for me to help you out any financially at the present time, as you are well aware it costs a lot of money to get things started and I cannot afford to jeopardise our prospects here by embarrassing myself at the present time. I gave Dr. Bellinger $200 not long since which he said he wished to send to California and then I paid him $200

(Testimony of J. A. Moore.)

more for some medicine. Doctor has been so miserable in health that I could not depend on him at all for giving treatment and I had to have Dr. Harrison come here for that purpose. The trouble with Dr. Bellinger is that you cannot depend on him at all to do business. He has no conception of the necessity of keeping engagements and with morphine patients whenever you break faith with them you might as well quit, just as soon as they lose confidence in you you have lost all control or influence over them. I dont see how you ever managed to hold the doctor down sufficiently to get him to attend to business. We have a fine class of patients at the present time and you can look for something to drop almost any minute from this end of the line. With kind est regards and best wishes,

I remain as ever,

Your sincere friend,

J. A. MOORE.

Q. Mr. Moore, how much money did you pay the Citizens' State Bank on account of this note from time to time?

A. I don't believe, Mr. Kiefer, that I ever paid the bank anything on the note at all; but it is barely possible that in the early period of those renewals that I paid some interest, but I am not clear on that subject.

Q. How many times did you renew the note?

A. That I don't know either, Mr. Kiefer. There are several times.

(Testimony of J. A. Moore.)

Q. The first renewal took place at the time of the maturity of the first note, didn't it—of the original note?

A. I don't know whether it was exactly at maturity or shortly afterwards; I could not say.

Q. It was either at maturity or very shortly afterwards? A. That I don't know either, Mr. Kiefer.

Q. And it was of interest to you at that time to get time on the note, was it not?

A. Well, I could not pay it.

Q. You were not able to pay it? A. No, sir.

Q. Now, Mr. Moore, you sold a number of State rights? A. Yes, sir.

Q. What States did you sell?

A. We sold Connecticut, I think.

Q. What did you receive for it?

A. We received something like fifteen hundred or two thousand dollars.

Q. What other places did you sell?

A. We sold New Hampshire, but that trade was never consummated.

Q. Did you get anything out of it?

A. No, sir. There was some money paid on Maine.

Q. How much on Maine?

A. I don't know on Maine. There as a combination of Maine, I think, and New Brunswick, possibly together, and there was some money paid on those, perhaps a thousand dollars; I don't recall now just how much it was, Mr. Kiefer.

(Testimony of J. A. Moore.)

Q. What price was bargained for Maine and Nova Scotia? A. I don't remember now.

Q. You don't remember the price? A. No, sir.

Q. You sold Massachusetts, didn't you?

A. We never got any money out of Massachusetts.

Q. How much was the bargain for Massachusetts?

A. There was not any definite sum, I don't think, Mr. Kiefer, agreed to for Massachusetts. It was dickered at for a good while, and a kind of conditional sale made, if I remember right, but we never got a dollar for Massachusetts.

Q. Was not the price to be twenty thousand dollars?

A. Well, it is possible that it was.

Q. And didn't you get fifteen hundred dollars on account of Maine and Nova Scotia?

A. That may be true also. It was ten or fifteen hundred dollars, something like that.

Q. You tried Chicago? A. Yes, sir.

Q. What did you accomplish there?

A. We did not get—we did not effect any sale there.

Q. Now, then, you tried Texas? A. Yes.

Q. What did you do with Texas?

A. There was a partial sale made of Texas; if I remember correctly, somewhere from one thousand to two thousand dollars was paid in on Texas.

Q. Now, when you carried on these institutions didn't you receive compensation from your classes?

A. Very little. The doctors in charge received some

(Testimony of J. A. Moore.)

thing, but never enough to pay the expenses of the institution that was kept up.

Q. What other States or local territory did you sell besides those you have enumerated?

A. I don't think there was money received on any others.

Q. Did you sell Missouri? A. No, sir.

Q. Did you get any money on Missouri?

A. No, sir.

Q. Well, what other States did you contract for?

Mr. McKAY.—Your Honor, it seems to me this cross-examination has gone away beyond the limit of the rule.

(Objection sustained by the Court and an exception allowed to plaintiff.)

Q. Mr. Moore, how much money did you get all together from the sale of these rights?

(Objected to by counsel for defendant.)

(Objection sustained by the Court and exception allowed to plaintiff.)

Mr. KIEFER.—Now, if your Honor please, I preserve the right to further examine this witness with regard to the time of his arrival in the city.

Q. Mr. Moore, to refresh your recollection, I show you the "Seattle Post-Intelligencer" of Sunday, December 12, 1897, and direct your attention there to an article referring to yourself. I ask you if, looking at that, you can refresh your recollection as to the time when you arrived in the city?

(Testimony of J. A. Moore.)

A. Well, that possibly may be correct, Mr. Kiefer; that says "J. A. Moore and wife, who have spent the last two weeks in Mexico, returned to Seattle, Friday. They expect to remain here."

Q. That would be Friday, December 10?

A. That might be Friday, December 10.

Q. According to that paper? A. Yes, sir.

Q. And you would not dispute that date?

A. I don't know that I would. I don't know whether this little item here is correct or not. It may be true and it may not be, I don't know.

Redirect Examination.

Q. (By Mr. GILMAN.) What, if any, other property had this corporation in addition to this formula?

Mr. KIEFER.—We object to that as irrelevant and immaterial; no pleadings which put that in issue.

Mr. GILMAN.—I thought counsel was endeavoring to make the point that he gave this money for the stock and hence there was a consideration for it.

(Objection overruled by the Court and an exception allowed to plaintiff.)

A. I don't know that there was anything. Never heard of any except it.

Q. Now, then, was it a part of the original agreement —I will ask you whether or not—that your fifth interest in this remedy should come to you through the way of

(Testimony of J. A. Moore.)

stock in a corporation organized to take over the remedy?

A. Yes. It was really all one transaction. I was to have a fifth interest in the remedy or the company or its stock. It was one and the same transaction.

Q. And it was put in the way of a corporation?

A. Yes, sir.

Q. Now, at the time you saw these people there—patients—had you any knowledge as to whether or not they had ever had the opium habit or had been cured of it?

Mr. KIEFER.—I object to that, if the Court please. That has been fully gone over in direct examination. He testified that he went down there and observed the cures and talked with the patients.

(Objection overruled by the Court and exception allowed to plaintiff.)

A. The people whom I saw there—of course I had no reason to know, no way of knowing whether they were morphine fiends or cocaine fiends, or whether they were stool pigeons, or what they were. They were a very happy lot and seemed to be having a good time.

Q. Now, then, in reference to these sales shown by the letters, etc. I will ask you what efforts you made to promote this thing and the results of your efforts; state as briefly as you can?

A. I went into the matter in absolute good faith and put a great deal of my own money into, and money that

(Testimony of J. A. Moore.)

I secured from my own family, to demonstrate the thing and make it a success. After I was convinced that it was good, or thought I was convinced of it, I put my whole energy and my money in it to make it a success, and it took nearly a year and a half or more before I gave it up feeling that I could not succeed in it.

Recross-examination.

Q. (By Mr. KIEFER.) Something I overlooked; in page 1 of this letter of March 3, 1895, you refer—this sentence occurs: "You state that you have given an option on the whole world for one hundred thousand dollars. This seems rather low when you take into consideration that it will not pay out the price of the stock lying in escrow in Seattle, and to own said stock the different shareholders would have to pay for the same out of their pockets—and the world sold." Will you explain what that letter referred to?

A. I don't know exactly, but the stock was put up in some way—I don't know where—that certain moneys coming out of this institution, or out of the operation of the company, should be paid to Bellinger and Crane as final payments for the stock. I don't think that the moneys paid or the lands given by any parties gave them the full stock. My recollection was that more money was to go out for them before there was any divided among the company; and if this deal had gone through evidently from that statement Crane and Bellinger

(Testimony of J. A. Moore.)

would have gotten all the money and we would have been in debt to them."

And defendant rested.

And thereupon plaintiff in rebuttal called GEORGE J. CRANE, who being sworn testified that he resides at Council Bluffs, Iowa; knew defendant Moore in 1893 here in Seattle; that he did not know him at the time he left Council Bluffs and had never seen him until he met him here. That Dr. F. P. Bellinger was here with him in 1893, and that together maintained an institute in this city in 1892 and 1893 for the cure of the opium, drug, liquor and tobacco habits, and that after coming here and getting the institute started he got acquainted with Moore and that Moore came to the institute many times saw the patients and talked with them, and finally became interested in the remedy; that the Bellinger German Remedy Co. was formed, that Moore took a fifth of the stock and gave his note for $5,000 at ninety days in payment for the stock, and that witness delivered the stock to Moore after the corporation was formed, and Moore delivered the note. Witness further testified that he had been associated with Mr. Bellinger actively in the promotion of this cure before the formation of the corporation; that they afforded Moore the fullest opportunity for investigation, made known and introduced to him a number of parties who had taken the cure, including the ex-chief of police of Portland, Oregon; that the negotiations covered a period of about three months.

(Testimony of George J. Crane.)

Witness further testified that after getting from Moore the original $5,000 note he mailed it to the Citizens' State Bank of Council Bluffs, Iowa, as collateral security for the indebtedness which the witness then owed the bank. That the bank was pressing him for more collateral or for payment and that he sent them this $5,000 Moore note, and that from the time he left Council Bluffs until after the note matured he did not see or have any opportunity to talk with Charles R. Hannan the cashier. He also testified that he never told him anything about what the consideration for the note was, and that the witness's daughter wrote the letter for him and the note was sent by mail. Witness further testified that he did not in anywise consent to the renewal of the note in the name of the bank and that it was renewed without his knowledge; that he knew nothing of the taking of renewal notes direct to the bank until after it was done and that he was not in Council Bluffs after mailing the note until after the note was taken direct to the bank. Witness further testified that Mr. Moore came to San Francisco after giving the original note and had an interview with witness and wanted it back saying that he had made up his mind not to go into it, and that witness told him that he had already sold it to the bank at Council Bluffs, and that he could only get it back by paying it, and that Moore finally concluded to go out and sell territorial rights, and that he engaged in that business, and that Moore refused to

(Testimony of George J. Crane.)

make any accounting to witness as general manager of the German Remedy Co. except that Moore admitted to witness that he got $5,000 for one sale. Witness further testified that Charles R. Hannan is very hostile towards the plaintiff bank and its officers, and upon cross-examination witness testified that he was president of the German American Investment Co. engaged in the buying and selling of real estate and the lending of money and that he had been released by the bank from the obligation for which the Moore note was taken as collateral but was unable to fix the date from recollection. That he had been in the life insurance business the company with which he was connected failed after witness closed his connection with it; that he had been a banker, merchant, owner of a grist mill and farmer and had dealt in agricultural implements and had been the owner of a circus for about six months. That he became interested in the Bellinger remedy about a year before he came to Seattle in 1892 or 1893; that he asked Judge Austin to try to interest some good men to make a stock company and capitalize it on this remedy; that he negotiated with Moore and presented him to the patients; told him how they cured them, and that Moore was there and saw them; that he introduced him to patients whom they had had and others who had come to this State who had been cured; that Dr. Bellinger never would tell witness what the remedy consisted of and he always claimed to witness that there was in it

(Testimony of George J. Crane.)

a secret drug obtainable only in Germany, and that he made the same claim to Moore; that he had told Mr. Moore that he and Bellinger had the only antidote for morphine known; that witness believed it and Moore could send any physicians down there, and that he told Moore they could cure disease but could not make brain. Witness further testified that he had told Moore that they had the only cure known for the morphine habit in order to get him interested and to get him to invest with them.

Mrs. Beasley, a witness on behalf of plaintiff, being sworn, testified that she was in Seattle in 1893 and is a daughter of George J. Crane, the previous witness. That Mr. Crane and Dr. Bellinger came to Seattle early in December, 1892, and remained here some four months. That she spent some time about the institute, and that she saw Mr. Moore, the defendant, about there talking with patients, and that the patients he saw were genuine patients under actual treatment, and that she was present with her father, Mr. Crane, when he delivered the defendant's stock to him; that the witness and her father sent the original Moore note for $5,000 to Council Bluffs to the Citizens' State Bank; that her father was not in Council Bluffs from the time the note was given for a considerable time, and not until after the note matured.

On cross-examination witness testified that she was 21 years of age at the time she was here with her father

(Testimony of George J. Crane.)

in 1892 and 1893, and that her father and Dr. Bellinger were trying to sell this remedy to other people also.

GEORGE J. CRANE, being recalled, the plaintiff offered to show by the witness on the stand that after the bank received the $5,000 original Moore note as collateral security for the obligation of witness to the Citizens' State Bank, the Citizens' State Bank, the then holder of this original note, without the knowledge or consent of the witness, extended the time of payment of said note at the request of defendant Moore, and then subsequently took the note of defendant Moore direct to the Citizens' State Bank without the consent of the witness on the stand, and that thereupon the witness claimed to be released from his obligation to the bank, and the bank released him in pursuance of that, to which offer the defendant objected as follows:

"Mr. GILMAN.—I don't see how that affects this defense, and I object to it"; which objection was sustained by the Court and exception allowed to the plaintiff.

Thereupon the plaintiff introduced the deposition of T. G. TURNER, a witness on behalf of the plaintiff, taken in January, 1904, as follows:

Q. What, if any, knowledge, Mr. Turner, have you of the original note executed by Mr. Moore having been renewed and other notes taken and interest paid on the original note?

(Deposition of T. G. Turner.)

A. The notes have been renewed from time to time and some interest was paid thereon.

Q. What, if any, objection did Mr. Moore ever make as to the consideration for his note?

A. He never made any objection.

Q. Mr. Turner, the original note, as I understand it, was payable directly to George J. Crane, was it not?

A. Yes, sir, I think it was.

Q. State now what, if any, change in the form of the note was made by the renewal?

A. The renewal notes were taken to the Citizens' State Bank.

Q. What note do you mean when you refer to the Crane note, Mr. Turner, as taken up?

A. The note which was owing to the bank and which we held the collateral security of Mr. Moore on.

Q. That is, the notes that were made to the Citizens' State Bank were to be held by the bank as collateral to the indebtedness owned by Mr. Crane to the bank?

A. Yes, sir.

Q. Mr. Turner, what has been the attitude of Mr. Hannan while he was connected with the Citizens' State Bank or the First National Bank with reference to enforcing the collection of the notes in suit against Mr. Moore, the defendant?

A. He has been waiting, or always waiting for a time to come when he could collect from Mr. Moore.

Q. When you say that, Mr. Turner, do I understand you to mean that he was waiting for such a time as that

(Deposition of T. G. Turner.)

Mr. Moore would financially able to meet the notes or not?

A. That was the only question, that whenever Mr. Moore was financially responsible the suit would be commenced at once.

Q. Mr. Turner, when did Charles R. Hannan retire from the First National Bank—about when?

A. The latter part of January, 1902.

Q. What has been his attitude toward the bank or officers of the bank, and especially towards the president of the bank, Ernest E. Hart, since the date of his retirement?

A. He has apparently had it in for the bank and for Mr. Hart especially, trying in every way to injure the bank and Mr. Hart.

Q. What, if anything, did Mr. Hannan ever say to you, or in your presence to anyone else, as to the notes sued upon being tainted with fraud, or anything of that character?

A. He never intimated to me in any way that the notes were obtained by fraud or tainted with fraud.

Q. What, if any, claim did Mr. Hannan ever make to you, or in your presence to another, that the note was without any consideration or tainted with fraud?

A. He always claimed that the note was given for consideration, and that the only question was Mr. Moore's inability to pay.

Thereupon the plaintiff offered in evidence the deposition of Dr. F. P. BELLINGER taken February 4, 1903, on behalf of the plaintiff by stipulation between counsel:

Q. State whether or not you entered into a contract with the defendant J. A. Moore to compound and furnish medicines for Bellinger's German Remedy Company according to the secret formula known to Dr. F. P. Bellinger, and if so, state whether or not said contract was oral or in writing.

A. No such contract was ever made with the defendant J. A. Moore. When the Bellinger German Remedy Co. was incorporated and organized it was understood that I was to be the medical director of the company, and afterwards I became medical director, and as such medical director it was my duty to compound the medicines under such formula.

Q. If you have answered that you have entered into a contract with the defendant J. A. Moore to compound medicines for the Bellinger German Remedy Co. according to the secret formula known to Dr. F. P. Bellinger, and have testified that the said contract was entered into orally, state exactly and in detail what said contract was, setting out fully its terms and conditions, and if you have answered that it was in writing, annex to your answer hereto a copy of said contract as a part of your answer, and identify the said copy of said contract as a part of your answer, and identify the said copy by your initials written thereon, and by the initials

(Deposition of F. P. Bellinger.)

of the notary public before whom your deposition is taken.

A. As I said before, no contract, either oral or written, was ever made with J. A. Moore.

Q. If you have testified that you entered into a contract with the defendant J. A. Moore to compound and furnish medicines according to the secret formula known to Dr. F. P. Bellinger for the Bellinger German Remedy Co., state whether or not you furnished the medicines required by said contract, and state generally what you did in the execution and performance of said contract.

A. I never contracted with J. A. Moore to compound and furnish according to the secret formula, but as an officer of the Bellinger German Remedy Co. it was one of my duties to compound and furnish medicines upon payment to me of the cost price of same.

Q. State fully each and all and everything that you did in the execution and performance of said agreement, a copy of which you have annexed to your deposition heretofore given herein on October 13th, 1902, setting out specifically and generally each and everything that you did in the execution and performance of said contract.

A. Under the terms of the contract Mr. Crane and I were to sell to the said corporation the secret formula, receipts and prescriptions otherwise known as the German Remedy Co. and the exclusive right to compound, manufacture, use, vend and sell and deliver the same

(Deposition of F. P. Bellinger.)

prior to the delivery of the stock to Mr. Crane and me, I delivered to the said corporation the written formula and receipt for the manufacture of that remedy.

Q. You have heretofore testified in answer to interrogatories propounded to you on the 13th day of October, 1902, that the consideration of the original note, of which the notes herein sued upon are renewals, was 2,000 shares of the capital stock of the Bellinger German Remedy Co. of Seattle, Washington; please state whether or not there was any other or further consideration from yourself or the said Dr. Bellinger to said J. A. Moore for said note, and if so, state specifically what said consideration was?

A. There was no other consideration.

Q. If you have testified in answer to the preceding interrogatory that there was any other or further consideration than the said 2,000 shares of stock in said company, state specifically, fully and in detail, what, if anything, you did or the said Dr. Bellinger did in the execution of or the delivery of said consideration and performance of said consideration?

A. There was no other consideration. We performed said condition.

Q. State whether or not you were the owner of the secret formula or recipe or prescription for making medicines or remedies for the cure of the morphine, cocaine, opium, chloral, liquor and tobacco habits, with the sole right to use the said formula, recipe or pre-

(Deposition of F. P. Bellinger.)

scription throughout the world, in the month of March, 1893?

A. Mr. Crane and I owned together the secret formula or recipe for making such medicines in March, 1893.

Q. State whether or not you or the Bellinger German Remedy Co., of Seattle, Washington, ever had a safe deposit box in the safe deposit vaults of the Seattle Trust and Safe Deposit Co., underneath the Merchants' National Bank in Seattle, Washington?

A. The Bellinger German Remedy Co. of Seattle, Washington, had a safe deposit box in the Seattle Trust and Safe Deposit Co.

Q. If you answer that you or the said Bellinger German Remedy Co., of Seattle, Washington, had a safe deposit box in the place mentioned in the preceding interrogatory, state whether or not you ever placed in said safe deposit box the secret formula of Dr. F. P. Bellinger, for making and compounding and preparing the medicines to be used by the Bellinger German Remedy Co., of Seattle, Washington, or the medicines referred to in the contract between yourself and Dr. Bellinger as parties of the first part and the Bellinger German Remedy Co.?

A. I placed in the said safe deposit box the secret formula referred to, under an arrangement with the Bellinger German Remedy Co.

Q. If you answer that you placed said formula in said safe deposit box, state whether you ever removed

(Deposition of F. P. Bellinger.)

the same, and if so, when and under what circumstances? A. I never did remove it.

Q. If you have answered that you placed said formula in said safe deposit box, answer who had access to said box and with whom the key was left?

A. The key was left with the person in charge of said safety box, and J. A. Moore also had access to said box.

Q. Do you know where at the present time said formula is, or what became of it at any time?

A. No, I do not.

Cross-Interrogatories.

Q. Did you ever have a secret or other formula for the cure of the morphine, cocaine, opium, chloral, liquor and tobacco habits or either of said habits?

A. I did.

Q. If you answer yes to interrogatory No. 1, then you may state whether you are the author or discoverer of said formula, and whether or not the same is known to any other person except yourself?

A. I was the author and discoverer of the same. No one else but myself knew said secret formula in March, 1893, and at said time, in connection with George J. Crane, was the sole and only owner of same, but Crane did not have any knowledge of the contents of said formula. I cannot say whether anybody else since then has become acquainted with it. I know that I never gave it to any one.

(Deposition of F. P. Bellinger.)

Q. State the contents of said formula?

A. I refuse to answer cross-interrogatory No. 3, because under my contract with the Bellinger German Remedy Co. I have no right to disclose the contents of said formula to anyone, because the value of said formula consists in the knowledge of its contents, and if I should make public the contents of said formula, it would destroy the value of said formula to the Bellinger German Remedy Co.

Q. Did you deliver the said formula to the Bellinger German Remedy Co., of Seattle? If so, when and to which officer of said company?

A. I delivered said formula to myself as medical director of the Bellinger German Remedy Co., and by order of the officers of said corporation I deposited the same in the safety deposit box of said Bellinger German Remedy Co., in the Seattle Trust and Safe Deposit Co.

Q. If you say that you deposited the said formula in the vaults of the Seattle Trust and Safe Deposit Co., state whether you ever removed or aided in the removal of the said formula from said vaults?

A. I never did, nor aided anyone in removing the same.

Q. Do you know what became of said formula? If so state what became of it?

A. I do not, but I have complete and thorough knowledge of all the contents of said formula and can

(Deposition of F. P. Bellinger.)

give the said formula in writing to the Bellinger German Remedy Co. if desired.

Q. State what communication has passed between between you and the attorney for the plaintiff in this action in regard to your testimony?

A. None whatever.

Plaintiff offers in evidence the deposition of F. A. BUCKMAN:

Q. State your name, age, place of residence and occupation.

A. My name is F. A. Buckman. Age, 38. Place of residence, Council Bluffs, Iowa. Occupation, assistant cashier of the First National Bank of Council Bluffs.

Q. State what position, if any, you held or occupied in the Citizens' State Bank of Council Bluffs, Iowa, in the months of December, 1896, and January, 1897?

A. Discount clerk.

Q. State whether or not as an officer, agent or employee of said Citizens' State Bank of Council Bluffs, Iowa, you had any correspondence with the defendant J. A. Moore, during the months of December, 1896, and January, 1897, or at any other time respecting three certain notes made by said defendant to said Citizens' State Bank of Council Bluffs, Iowa, dated January 2, 1897, two for $2,500 each and one for $800, and if you say in answer to this interrogatory that you had such correspondence annex to this deposition as a part of

(Deposition of F. A. Buckman.)

your answer hereto copies of all letters written by you to said bank?

A. I do not find any correspondence with the defendant J. A. Moore, during the months of December, 1896, and January, 1897, but in the letter-book of the bank under date of October 30th, 1896, I find a letter written by myself and signed C. R. Hannan, said signature having been signed by me under authority from Mr. Hannan. This letter is in words and figures following, to wit:

Oct. 30, 1896.

J. A. Moore, Chihuahua, Mexico.
Dear Sir,

Please find herewith for your signature three notes, two of $2,500 each and one of $700. The latter is made up of interest July 1 to Oct. 30, on the $5,000, and the $545 note, with interest, from June 1 to July 1. If you will sign these and return will return old notes to you at once.

Respy,

C. R. HANNAN.

The original of the above letter was placed in an envelope and the envelope properly stamped and addressed to Mr. Moore and mailed to him at the address mentioned in the letter.

In the same letter-book and of date of November 14th, 1896, is a typewritten letter addressed to J. A. Moore, which said letter was dictated by me as one of my

(Deposition of F. A. Buckman.)

regular duties in the bank but signed by Chas. R. Hannan, the then cashier of the bank. This letter is in words and figures following, to wit:

Nov. 14, 1896.

J. A. Moore, Esq., Room 45, Bank Building, Denver, Colo.

Dear Sir,

We are in receipt of your favor of the 6th inst., enclosing new notes and beg to return you herewith your two old notes dated Jan. 1, for $2,500 each, also interest note of $545, dated Jan. 1st, 1896. I note that you say you are to be in Denver. I sincerely hope it may be your good fortune to get into possession of money enough to take up the interest note we now hold and the others as rapidly as possible. Be kind enough to help me out in this matter as I have personally vouched for you in the matter and it is becoming quite embarrassing to me because our people are complaining and saying that I should have enforced collection on this paper a long time ago. Be kind enough to give this matter your best and immediate attention and the same will be appreciated.

Yours truly,

CHAS. R. HANNAN.

The original of the letter above set forth was placed in an envelope, sealed and the envelope stamped and properly addressed according to the address mentioned in the letter above and the same mailed in the postoffice

in Council Bluffs, Iowa. Neither of these letters were ever returned to the bank of the postoffice department. I find no other correspondence relative to these notes in the files of the bank or in the letter-books of the bank.

Q. If you testify in answer to the foregoing interrogatories that you had correspondence with the defendant J. A. Moore respecting the said notes dated January 2, 1897, one for $2,500, another for $2,500, and another for $800, payable to the Citizens' State Bank of Council Bluffs, Iowa, state whether or not the defendant J. A. Moore sent said notes to said bank by mail and whether there was accompanying them a letter, and if you answer that said notes were accompanied by a letter state whether or not you saw and read such letter at the time or at any other time, and state also whether you have made search for such letter; state whether you have found such letter and whether it is in existence to the best of your knowledge?

A. At the time referred to in the interrogatory it was part of my duties in the bank to open the mail. I remember receiving the notes in question, together with a letter accompanying same, and I have made diligent search therefor in all places in the bank where such letter would be kept and have been unable to find the same. When the Citizens' State Bank was turned over and reorganized into the First National Bank, a large amount of correspondence deemed unimportant, and a large number of the old letter-books of the Citizens'

(Deposition of F. A. Buckman.)

State Bank were destroyed, and this letter was undoubtedly among those letters destroyed at that time.

And thereupon the Court adjourned until 10 A. M. February 2, 1906, and on February 2, 1906, the following proceedings were had: The plaintiff read in evidence from the deposition of the witness Gleason:

"Q. What has been the feeling of Charles R. Hannan towards the plaintiff herein since he ceased his connection with the plaintiff?

A. Mr. Hannan has been hostile to the interests of the bank."

And plaintiff read the following interrogatory and answer from the deposition of the witness Weis:

"Q. What has been the feeling of Charles R. Hannan towards the plaintiff herein since he ceased his connection with the plaintiff, and what, if anything, do you know of expressions of ill-will or hostility towards the plaintiff on the part of Charles R. Hannan?

A. I know there has been ill-feeling on the part of Hannan towards the plaintiff, but I do not know much about this, and I never heard Hannan make any expression of ill-will or hostility."

J. A. MOORE, being recalled for further cross-examination by the plaintiff, testified in substance as follows: That Mrs. Moore was absent with him from this city in 1897, and that at that time Moore had no residence or house or place of abode in this city and his furniture had been stored, and that he returned to this

(Testimony of George J. Crane.)

city some few weeks before he went to board with Mr. McAllister in December, and that the best of witness' recollection was that he returned to the city about the middle of November, 1897.

GEORGE J. CRANE was thereupon recalled by the plaintiff, and the plaintiff's counsel made this offer of testimony to prove by the witness on the stand that when he learned of the bank (Citizens' State Bank) having accepted the note direct from Moore in lieu of one delivered to the bank by him as collateral security, the original $5,000 note, he objected to the action of the bank, and demanded to be released, and that the bank did release him—released him personally and all his property except the Moore note, and agreed to look wholly to the Moore note for the indebtedness for which it had been given as collateral, and that this was done as soon as witness learned from Moore in 1893, of the acceptance of his note direct to the bank, and that it was after the maturity of the original note; to which offer the defendant objected, which objection was sustained by the Court, and exception allowed to the plaintiff.

The plaintiff thereupon rested its rebuttal, and the defendant in sur-rebuttal, took the sand in his own behalf and testified that Dr. Bellinger was the only man who had access to the safe deposit box, and that no person else was allowed to interfere with that in any way as long as he lived.

Thereupon the defendant offered in evidence the deposition of CHARLES R. HANNAN, taken January 25, 1906, as follows:

Q. When and how did you learn that T. G. Turner had signed your name to a written assignment of the notes made by the defendant?

A. I was advised by someone about the time I made my deposition while at Detroit in 1904, that Mr. Turner had signed my name as cashier of the Citizens' State Bank, my best recollection being that my name was signed per T. G. Turner. I don't remember who told me. This is all I then learned.

Q. Did you learn that your name had been signed to said assignment before the commencement of this action? A. No.

Q. Where were you at the time you learned that your name had been signed to said assignment and where was the said T. G. Turner?

A. I was stopping in Detroit, Michigan, engaged in building a railroad between Detroit, Michigan, and Toledo, Ohio. So far as I know Turner was in Council Bluffs, Iowa.

Q. After you learned that your name had been signed to said assignment did you ever meet or have any conversation with the said T. G. Turner?

A. Yes. I am still maintaining my residence at Council Bluffs, Iowa, where I am keeping my house open, same being occupied by a brother in law who is to step out any time I return. While at Detroit in

(Deposition of Charles R. Hannan.)

1904, I was only there temporarily engaged in constructing a railroad, and am now located in Boston temporarily. I go back to Council Bluffs occasionally to look after my interests there, and Mr. Turner being a brother in law, have called on him at his house and he has called on me at my home, but the matter in question was never referred to by either one of us.

Q. If you say yes to the foregoing question state whether anything was said about your name having been signed to said assignment; and if so, state what was said?

A. Nothing was said. I adopt my answer to Number 4 as an answer also to this question.

Testimony closed.

The plaintiff then moved the Court to instruct the jury to render a verdict in favor of the plaintiff upon the ground that the defendant has not pleaded any defense in his answer; that it appears from the defendant's testimony that the original note for $5,000 given by Mr. Moore in March, 1893, was turned over by the Citizens' State Bank, the assignor of the plaintiff, before maturity, as collateral security for a debt of Crane to the Citizens' State Bank, and that at that time Mr. Hannan, the cashier, who acted on behalf of the Citizens' State Bank, did not know of any failure of consideration, or of any infirmity in the consideration; and on the further ground that the defendant has shown that the original note for $5,000 above mentioned, of

which the notes in suit are successors, was taken by the Citizens' State Bank, plaintiff's assignor, as collateral security for a debt which is still existing and unpaid, and that the same was acquired subsequently by the Citizens' State Bank by novation by the defendant J. A. Moore executing to the Citizens' State Bank a note or notes for $5,000 upon the maturity of the first note, upon the consideration of an extension of time, as testified to by him; and upon the further ground that it appears that the consideration for the original $5,000 note made in March, 1893, was the purchase of 20,000 shares of stock in the Bellinger German Remedy Co., a corporation under the laws of the State of Washington; and that the defendant has neither pleaded nor proved, nor offered any rescission of the contract, and it appears that he received his stock and has not rescinded, and the only contract for the turning over of Bellinger's cure was a written contract for turning over to the Bellinger German Remedy Co., a corporation, and that the defendant cannot avail himself of any alleged breach of that contract, and that all prior negotiations were merged into that contract, and that any breach thereof would give rise to a cause of action in favor of that company and not in favor of this defendant; and upon the further ground that the defendant has shown that he received some consideration for the note, received a partial consideration, that at the most there was only a partial failure of consideration, and he cannot prove that except on pleading the partial failure by way of counterclaim, which he has not done in this case;

which motion the Court denied and plaintiff excepted and exception allowed.

The plaintiff in writing requested the Court to instruct the jury as follows:

1. Under all the law and evidence in the case the jury are instructed to return a verdict in favor of the plaintiff for the full amount of the notes pleaded in plaintiff's amended complaint, with interest from date at the amount stipulated therein, to wit, eight per cent per annum to be compounded semi-annually.

2. The jury are instructed that the burden of proof is upon the defendant to prove by preponderance of evidence in the case the defenses alleged by him in his answer herein.

3. The jury are instructed that the defendant has not made out the defense of the statute of limitations and the jury will not consider the same.

4. If the jury find from the evidence that when the Citizens' State Bank of Council Bluffs, Iowa, received the note made by the defendant for $5,000 in favor of George J. Crane in March, 1893, the officers of the said bank knew of nothing to apprise them or put them upon inquiry that the said note was given without consideration or procured by fraud, the verdict of the jury will be for the plaintiff for the full amount sued for.

5. If the jury find from the evidence that the defendant in making said contract with George J. Crane and F. P. Bellinger in March, 1893, for the purchase of stock in the Bellinger German Remedy Co., for which said $5,000 note was given, relied upon his own investi-

gation of the merits of the alleged cure for the liquor, drug and tobacco habits, then no defense has been made out in this case, and the verdict should be for the plaintiff for the full amount of the plaintiff's claim.

6. If the jury find from the evidence that the contract of F. P. Bellinger and George J. Crane for the transfer of the Bellinger remedy for the liquor, drug and tobacco habits, was made with the Bellinger German Remedy Co., a corporation, then the defendant has not made out his defense and the verdict must be for the plaintiff for the full amount claimed.

7. If the jury find from the evidence that F. P. Bellinger and George J. Crane, in March, 1893, honestly believed that said Bellinger possessed a cure or remedy for liquor, drug and tobacco habits, and their experience with the use of the same led them to believe that the same was a good cure, and they honestly represented to the defendant that it was a good cure, the failure of such cure to work perfectly after long trial would be no defense to the defendant in this action.

8. The defendant cannot set up the failure of Bellinger's cure for the liquor, drug and tobacco habits to work out as he expected, unless in making the contract for the purchase of stock in the Bellinger German Remedy Co., he replied wholly and entirely upon the representation of Crane and Bellinger that the said cure was a success.

9. If the jury find from the evidence that Crane and Bellinger honestly believed that they had a good and successful cure for the liquor, drug and tobacco habits

in March, 1893, and in good faith, believing in said cure, organized a corporation known as the Bellinger German Remedy Co. and sold to the defendant one-fifth of the stock of said corporation for his said note for $5,000, although it eventually turned out that said cure could not be made a medical and commercial success, the failure of the same to prove a medical and commercial success would not afford any defense to the defendant, and the verdict of the jury should be for the plaintiff for the full amount sued for.

10. The jury are instructed that if the defendant, J. A. Moore, after learning that the said remedy for the cure of liquor, drug and tobacco habits was not a success and could not be made profitable, made the notes in suit to the Citizens' State Bank, he cannot now plead that the said cure was not a good cure, or that there was no cure, or that he was defrauded or inveigled into giving the original note.

And thereupon the Court instructed the jury as follows:

"Gentlemen of the Jury: This is an action against the defendant, James A. Moore, to recover the amount due upon three promissory notes. When I use the word 'due' I do not mean to say there is anything due on these notes, but in connection with what else I have to say you will understand by that phrase is meant the amount a computation of the principal and interest would bring.

The defendant has admitted the execution and delivery of these notes and that constitutes prima facie a right in the owner of the notes to recover against him;

that is, it is a prima facie obligation on his part to pay what he promised to pay to whoever is lawfully entitled to collect it.

The defendant, however, has made in a defense in the action on the ground that the notes were given without lawful consideration and created no obligation on his part to pay them when they were given, because they were given as a renewal of a previous debt created by a promissory note, and that in the original transaction in which the first note was given there was fraud and deceit practiced upon him and the note was obtained from him by fraud and deceit and without any valuable consideration.

The burden of proof is upon the defendant to establish that, and if that defense is established then the inquiry comes with respect to the right of the plaintiff in the action, who not being connected with the original transaction, claims rights based upon certain principles of law relating to commercial paper which protect it from such a defense which is only available to the defendant against parties in the same relative position which the original payees of the note held.

If the defendant was induced to give the five thousand dollar note by representations which were made to him by the payees, Bellinger and Crane, and the note would not have been given if those representations had not been made and believed and relied upon by the defendant, and if those representations were known at the time by the payees to be false and untrue and were made for the purpose of victimizing the defendant, or

swindling him, then there would be no lawful consideration for the note and it would be void as an obligation in the hands of the payees, and it would also be void in the hands of any transferee who at the time of receiving the note had knowledge that it has been obtained by trickery and fraud. These are the principles that must govern you in determining the rights of the parties to the present action.

The plaintiff in the case is the successor and assignee of the bank to which the notes were given, which was the transferee of the original notes. Now, the plaintiff in this action occupies exactly the same situation that the bank taking the first note from the payees occupied. If the obligation was void in the hands of the first transferee it is void in the hands of the plaintiff.

The jury are instructed that the burden of proof is upon the defendant to prove by a preponderance of the evidence in the case that the defense alleged by him in his answer herein.

The jury are instructed that the defendant has not made out the defense based upon the statute of limitations and the jury will not consider the same. That is one of the special defenses set up in the answer, that the action is barred by the statute of limitations, but there has been a failure of proof, so the jury will not have to consider that question.

If the jury find from the evidence that when the Citizens' State Bank of Council Bluffs, Iowa, received the note made by the defendant for five thousand dollars in favor of George J. Crane in March, 1893, the officers

of said bank knew of nothing to apprise them or put them upon inquiry with respect to the claim now made by the defendant that the note was given without consideration or procured by fraud, the verdict of the jury will be for the plaintiff for the full amount sued for.

Now, gentlemen of the jury, there is a question in the case as to which there is a conflict of testimony, and it is referred to the jury to decide what the truth about it is, whether there was knowledge on the part of the cashier, or whoever acted for the Citizens' State Bank of Council Bluffs at the time of receiving that five thousand dollar note. It is shown by uncontradicted evidence that the transaction was through Mr. Hannan, who was an officer of that bank at that time, and whose deposition has been taken in this case. Mr. Hannan will be presumed, as the result of the uncontradicted testimony in the case, to have been authorized to act for the bank in that matter, and any knowledge or information which he had on the subject is to be imputed to his principal, the bank for which he was acting, and the jury must determine this question of whether he knew of the fact that Mr. Moore had been swindled (if in fact he was swindled) in the transaction by which the note was obtained by him.

In determining that question you are to consider all the facts and circumstances attending the transaction and showing what knowledge Mr. Hannan did have in regard to the maker and the payees of the note and in regard to their dealings together with respect to that note and the circumstances under which the note was

obtained, and determine from a consideration of the testimony whether the evidence shows that Mr. Hannan did know of enough of the transaction to have put a prudent man on inquiry before accepting the note as a purchaser of it in good faith. The bank is chargeable not only with the knowledge which Mr. Hannan actually did have, but if there was some knowledge on his part which should have been a warning to him and would have caused a prudent business man to have made inquiry, then the bank is chargeable with all the knowledge that might have been obtained by an inquiry, and if there was a swindle practiced, and the bank, through Mr. Hannan, knew it or should have known it, then the note was equally void in the hands of that bank as in the hands of Crane and Bellinger, and if void in the hands of the Citizens' National Bank it is likewise void in the hands of the plaintiff bank.

(Defendant 1.)

I charge you that if the original note given by the defendant in this case to George J. Crane was without consideration and was obtained by said Crane from the defendant by false and fraudulent representations made by said Crane or his associate, Bellinger, to the defendant, and that the defendant signed said note relying upon such representations and believing them to be true then said note was invalid in the hands of Crane and Bellinger, or either of them, and they would have no right to recover from the defendant thereon.

(Defendant 2.)

I charge you that if said Crane and Bellinger, or either of them, represented to the defendant that they or either of them owned a secret formula from which a medicine could be compounded that was a specific for and would cure the morphine, cocaine, liquor and tobacco habits, and if said representations were made for the purpose of inducing the defendant to sign said original note in order to purchase an interest in said formula, and if the defendant, relying upon said representations and believing them to be true, and so relying and believing, signed said original note, and if, as a matter of fact, said defendants did not own or possess any such formula, or if the formula so claimed to be possessed by them was not a specific or cure for said habits and the said Crane and Bellinger, or either of them, knew that they possessed no such formula, or knew that any formula owned or possessed by them was not a specific or cure for said habits, then I charge you that such action on the part of Crane and Bellinger would amount to fraudulent misrepresentation and said note would be without consideration and void in the hands of Crane and Bellinger.

(Defendant 3.)

I charge you that if said note was obtained by said Crane and Bellinger, or either of them, from the defendant without consideration, and by false and fraudulent representations, and the Citizens' State Bank had notice or knowledge of said fraud and lack of considera-

tion at the time said note was transferred to it, then the rights of said bank in this note would be no greater than those of Crane and Bellinger, and under such circumstances said bank could not recover thereon.

(Defendant 4.)

I charge you that notice or knowledge on the part of a cashier of a bank who acts for it in a transaction is in law notice or knowledge to the bank itself.

(Defendant 5.)

The plaintiff sues as the assignee of the notes in controversy and it has no other or greater rights than the assignor, the Citizens' State Bank, and if said State Bank could not recover then plaintiff cannot recover.

(Defendant 6.)

I charge you that if you shall find under the instructions that I have heretofore given that the original note was fraudulent and without consideration in its inception and that at the time of its transfer to the Citizens' State Bank this fact was known by that bank or by its cashier who acted for it in the purchase of the same, and that the renewal notes which are the subject of the suit in this action were executed by the defendant without notice of the original fraud, if any, practiced on him, or if said renewals were obtained from the defendant by the false and fraudulent representations made by said bank, or its cashier, to the defendant, to the effect that said note had been acquired for value without notice in

due course of business, then I instruct you that your verdict must be for the defendant.

To make this last statement of the law clear and accurate it is necessary for me to state to you the converse of the proposition, and that is this: that if Mr. Moore, the defendant, before executing these renewal notes, these notes that are now sued on, had become fully informed and had knowledge of the truth or falsity of the representations made to him by Crane and Bellinger when he gave the original note, and also had true knowledge with respect to the manner in which the Citizens' State Bank had acquired that note and the facts upon which the rights of the bank to require him to pay that note depended, and in the light of full information and knowledge had recognized an obligation to pay the note and had executed these notes sued on in acknowledgment of that obligation, then he is liable on these notes irrespective of the question whether there was fraud in the original transaction or not and your verdict should be for the plaintiff in the case, if you find that Mr. Moore did execute these notes in consideration for a supposed liability, if he acted in the light of knowledge and was not deceived by false representations made to him as to the manner in which the Citizens' State Bank came into possession of the original note.

In this connection I should tell you that the letters of the defendant Moore which have been introduced in evidence as tending to prove an acknowledgment on his part, or an admission on his part, of liability to pay the debt, are to be considered in the same manner. They

are not admissions binding him, if at the time they were written he was ignorant of the fact that he had been victimized and swindled. Of course you take a statement of that kind from me always as qualified by this, that the question is referred to you to decide whether he was victimized and swindled. I am not telling you that he was; I have no right to tell you that.

In the progress of the trial and in the discussion of the case a claim has been made that there was a new liability created by novation. The Court instructs you that there was not any liability created by novation. A novation is a contract that requires three parties and the minds of all three must meet and be in accord so as to effect a novation. That would occur in a case in which we will say A (supposing that to represent a person) is indebted to B and B is indebted to C and they all agree that A shall become liable to C for the debt of B and B releases A from any further obligation to him and C accepts A in the place of B and releases B from any obligation to him. That constitutes a novation. You see it requires the concord of three minds.

(Defendant 7.)

I charge you that if you shall find from the evidence that said note was fraudulent and without consideration in its inception, then the burden of proof is upon the plaintiff to establish by preponderance of evidence that the Citizens' State Bank was a bona fide holder of said note, and if you shall find from the evidence that the said note was fraudulent and without consideration

in its inception, and shall further find that the plaintiff has not established by a preponderance of the evidence that the same was taken in due course of business without notice of such fraud, then your verdict must be for the defendant.

In the progress of the trial there has been some discussion as to whether receiving the five thousand dollar note merely as collateral security for a previously existing indebtedness of Crane to the bank without any agreement changing the relationship between the bank and Crane by extending him further time to pay his debt or forbearing to enforce payment, as to whether that would constitute a receipt of the note in the due course of business, which would entitle the bank to the right of a bona fide holder. The Court instructs you that without having to determine any questions in that matter upon the evidence, it is to be taken as a fact that the bank received the note and gave a consideration sufficient to make a binding contract and entitle it to the rights of a bona fide holder and to enforce payment against the maker, provided it was unstained by knowledge of fraud in the obtaining of the note originally—as a mere question of consideration the Court tells you that there was sufficient consideration.

If your verdict shall be for the plaintiff you will take the notes and compute the amount that is now due, including principal and interest at the rate specified in the notes, that is, simple interest up to the present time.

The Court submits two forms of verdict. If your verdict is for the plaintiff you will complete what is writ-

ten by inserting the amount in money that you award as damages; if your verdict is for the defendant your foreman will sign the other one which reads, "We, the jury, in the above-entitled cause find for the defendant."

The pleadings which go to the jury include this amended complaint and the answer which is in this volume. I will put these other papers in here to mark the place where that answer is and the amended reply. It will not be necessary for you, gentlemen, to try to study out what is in these other papers. The only paper which you may have occasion to refer to is the answer which I have marked here. The jury may retire."

And the jury having retired to consider their verdict the plaintiff, in accordance with Rule 58 of this court, as follows:

Rule 58. Exceptions to a Charge. Exceptions to a charge to a jury, or to a refusal to give as a part of such charge instructions requested in writing, may be taken by any party by stating to the Court, after the jury have retired to consider of their verdict, and if practicable before the verdict has been returned, that such party excepts to the same, specifying by numbers of paragraphs or in any other convenient manner the parts of the charge excepted to, and the requested instructions, the refusal to give which is excepted to; whereupon the Judge shall note such exceptions in the minutes of the trial or cause the reporter (if one is in attendance) so to note the same"; excepted to the refusal of the Court to give to the jury the instruction

requested by plaintiff in writing before the beginning of the argument to the jury, numbered 1, 5, 6, 7, 8, 9 and 10, and to the giving of the first, second, third, fourth, fifth, sixth and seventh instructions as requested by the defendant.

Plaintiff also excepted to the instructions given by the Court that the plaintiff occupies the same position to these notes as the Citizens' State Bank, and also to the instruction to the effect that any knowledge of Hannan, or any information which he might have, which would put a prudent man upon inquiry, was to be imputed to the bank and considered the knowledge of the bank so far as anything which might have been found out by inquiry goes; and plaintiff also excepted to the instructions given by the Court that there was no consideration for the renewal note.

Plaintiff also excepted to the instruction to the effect that the defendant Moore had a right to rely upon any representations made to him by Crane and Bellinger if false representations were made and he believed them, that he had a right to rely upon them and that such representations would constitute a defense.

Plaintiff also excepted to the Court's instruction that there was no novation.

And the jury afterward came into court and returned a verdict in which they said they found for the defendant, and thereupon the plaintiff moved for judgment in favor of the plaintiff for the full amount of the notes pleaded in its amended complaint notwithstanding the verdict, which motion was by the Court after argument

of counsel denied, and the plaintiff excepted and exception allowed to plaintiff; and thereupon the plaintiff presented a petition for new trial, which petition was by the Court denied, and plaintiff excepted.

And thereupon on the 5th day of March, 1906, the Court, upon motion of the defendant, rendered a judgment herein that the plaintiff take nothing by its action, and that the defendant recover his costs and disbursements to be taxed, to which judgment plaintiff excepted and exception allowed.

Order Settling Bill of Exceptions.

In this cause the Court having heretofore on a day of the November, 1905, term of the United States Circuit Court for the Western District of Washington, by order duly made, extended the time for proposing and settling bill of exceptions to the 17th day of March, 1906 and the Court having, for cause shown on the 14th day of March, 1906, extended the time for proposing and settling the bill of exceptions up to and including the 31st day of March, 1906, the same being a day of the November, 1905, term, both said orders being made in open court upon the consent of counsel for both parties; and this cause having come on to be heard upon the bill of exceptions as proposed by the plaintiff, and the plaintiff appearing by James Kiefer and James McNeny, its attorneys, and the defendant by L. C. Gilman and M. M. Lyter, his attorneys:

It is by the Court ordered that the foregoing bill of exceptions be, and the same is hereby, settled, allowed and made a part of the record herein.

And it is hereby certified that the foregoing bill of exceptions contains all the testimony in substance taken and admitted upon the trial of said cause, counsel for both parties appearing in open court and waiving formal notice of filing bill of exceptions and the time and place of settling same.

Dated March 30th, 1906, a day of the November, 1905, term.

C. H. HANFORD,
Judge.

[Endorsed]: Bill of Exceptions. Settled and filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 30, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs. No. 1128.
J. A. MOORE,
Defendant.

Petition for Order Allowing Writ of Error.

The First National Bank of Council Bluffs, Iowa, a banking association, duly organized and existing under and by virtue of the acts of Congress of the United States respecting banking associations, plaintiff in the

above-entitled cause, deeming itself aggrieved by the verdict of the jury entered on the 2d day of February, 1906, and the judgment entered on the 5th day of March, 1906, in pursuance of said verdict, whereby it is considered, ordered and adjudged that the defendant do recover of and from the plaintiff his costs and disbursements, and that the plaintiff take nothing by its action herein, and that plaintiff's action and complaint herein be dismissed:

Comes now by James Kiefer and James McNeny, its attorneys, and prays said Court for an order allowing said plaintiff to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that, upon the giving of said security, all further proceedings in this court be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray.

JAMES McNENY,
Attorneys for Plaintiff.
JAMES KIEFER,

[Endorsed]: Petition for Order Allowing Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 22, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States, in and for the Western District of Washington.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs.
J. A. MOORE,
Defendant.
No. 1128.

Order Granting Writ of Error and Fixing Amount of Bond.

This cause coming on to be heard in the courtroom of said court in the city of Seattle, Washington, upon the petition of the plaintiff filed herein for a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, together with the assignment of errors, also filed herein, within due time, it is now upon motion of James Kiefer and James McNeny, attorneys for plaintiff, ordered that a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, be allowed said plaintiff, and that the bond for costs and damages be and it is hereby fixed at two hundred and fifty dollars ($250).

And it is further ordered that all proceedings be stayed pending the determination of said writ of error.

Dated March 22, 1906.

C. H. HANFORD,
Judge.

[Endorsed]: Order Granting Writ of Error and Fixing Amount of Bond. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 22, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the United States Circuit Court of Appeals for the Ninth Circuit.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff in Error,
vs.
J. A. MOORE,
Defendant in Error.
No. ——.

Assignment of Errors.

Comes now the above-named First National Bank of Council Bluffs, Iowa, plaintiff in error herein, by James Kiefer and James McNeny, its attorneys, and particularly specifies the following as the errors upon which it will rely and which it will urge upon the prosecution of its writ of error in the above-entitled cause:

I.

That the United States Circuit Court in and for the Western District of Washington, erred in overruling the objection to the plaintiff in error to the introduction of any testimony in support of the third alleged affirmative defense pleaded in the answer of the defendant.

II.

That the Court erred in overruling the objection of the plaintiff in error to the introduction of any testimony in support of the fourth alleged affirmative defense pleaded in the answer of the defendant.

III.

That the Court erred in overruling the objection of the plaintiff in error to the question propounded to the witness Moore upon the stand as follows:

"Q. Now, I will ask you if you subsequently entered into any business transactions with Bellinger and Crane with reference to acquiring the formula for this remedy, and if so, what; state fully the details of the business which you did with them"; and to the answer to said question, which is as follows: "A. These gentlemen interested several parties in Seattle; I think I can recall them. One was Angus Mackintosh, then in the Merchants' National Bank; Mr. C. G. Austin, Judge Ira Bronson and myself, in this remedy, and a company was organized to manage the business. I was to have a certain interest in the stock—a certain interest in the company, and Mr. Bronson was, I think, to have a fifth interest. I do not believe I ever received the stock. And I was to give my note for five thousand dollars, due I think in six months, which I did. Messrs. Crane and Bellinger had a sale on for the State of California at the time, they claimed, for $20,000. This sale was practically all made excepting they had to go down there to demonstrate the value of the remedy, which

they said if it went through the money would be in and my share of it would be enough to pay the note before it was due. If they made the sale the money was never turned anywhere excepting to themselves, as it never came in to the company. I went into the business with them in good faith believing that they had a specific and a sure cure for all the drug habits and the liquor habit. I entered into it in absolute good faith, as well as did the other gentlemen in the company. I went east to Massachusetts accompanied by Mr. Bronson, and with positions secured offices were opened up to prove the efficacy of the remedy. We first opened in Massachusetts and were there for some time. * * * We only met with partial success there. Dr. Bellinger insisting that it was the physicians' fault that the cures were not made; and we finally asked him to come on himself—which he did—on to Boston; but he was partially successful only. He then suggested that we try in Chicago, and we opened a sanitarium in Chicago; I putting in up to that time over ten thousand dollars in cash. But that was only partially successful, and was left in the care of physicians there. I remained with the company perhaps a year and a half in various attempts to make the thing a success; but after that length of time I was convinced that it could not be made a success and I abandoned it, with the loss of a great deal of money."

IV.

That the Court erred in overruling the objection of the plaintiff in error to the question propounded to the

witness Ira D. Bronson on behalf of the defendant in error as follows: "Were you present at any negotiations between Crane and Bellinger with Mr. Moore?" and to the answer thereto: "A. About the first of March, 1893, I don't remember the exact date, but about the first of March, at the request of Mr. Moore, I went with him to an institute so-called, that was operated by F. P. Bellinger and George J. Crane. * * * I say, about the first of March, I, at the request of Mr. Moore, went to an institute, a so-called institute, that was operated by a Mr. George J. Crane and F. P. Bellinger, to investigate the value and the efficacy of a certain formula and remedy, as we called it, for the cure of the habit of tobacco, alcoholism, morphia and cocaine. At that meeting we met Mr. Bellinger; I think Mr. Crane was there at that first meeting—that is my impression, I think I saw him. I stated to Mr. Bellinger what I had come for, and he at once told me—I cannot give you the language, no, I cannot do that, but I can give you the substance of it. * * * That is many years ago. He said that he had a remedy that his father had discovered while he was a surgeon in the German army; that while his father was there in that position he had quite a number of soldiers who were addicted to alcoholism, and he searched to find a cure, and at last discovered a herb from which he concocted, and with other things, a remedy which acted very nicely and cured the patients that he had, the soldiers. Some time after, how long I don't know, that remedy came into his possession, whether by gift, purchase or otherwise, I

don't know; but he was the owner of it, and that after he became the owner of it he experimented with it and spent years, a good many years, in experimenting and in perfecting it, and to that extent that it would not only cure alcoholism, but also the tobacco habit, and finally the cocaine and the morphia habits. In our conversation I asked him whether he was the owner of it or not. He said he was. Then I asked him about the efficacy of it, what it would do. He reiterated that it would cure those habits. Then I asked him what length of time it would take to cure them, and he said that the tobacco habit could be cured in from ten days to three weeks, and my recollection is he said that some few cases he had cured even in a week. That I am not absolutely positive of, whether it was he or Mr. Crane may have said that, but I think it was Mr. Bellinger. Then I asked him if that was a cure, was a permanent cure. He said, 'Oh, yes.' They never wanted to use tobacco afterwards. Then I asked him how long it would take to cure the alcohol habit. He said from two to three weeks, possibly four, ranging from two to four weeks, and that that was a positive cure also. Then I asked him in regard to the liquor habit—I mean the morphine habit. He said that that would take from four to six weeks. I asked him if he had had any very severe, serious cases. 'Many,' he said. I asked him if he always cured them. He said he did. I asked him what length of time. He said, 'From four to six weeks.' Being a little skeptical I asked him further, 'Are you sure that you can cure the worst habit—the worst patient, those

who had been addicted the longest, in six weeks?' 'Yes,' he said, 'almost all cases, but there may be once in a great while a case that would take eight weeks, but that would cure any, absolutely any case.' That I think was all that we had at that meeting in relation to that. I mean by that, that that is all I remember"; and in permitting the said answer to go before the jury.

V.

That the Court erred in sustaining the objection of the defendant in error to the following question propounded by the plaintiff in error to George J. Crane on behalf of the plaintiff in error: "Q. Mr. Crane, after the note was renewed, the note for five thousand dollars was renewed by Mr. Moore, payable directly to the Citizens' State Bank, state whether or not the bank released you from liability to them"; and in overruling the offer of the plaintiff in error of certain testimony as follows:

"Mr. KIEFER.—What I want to show, if your Honor please—I want to make a definite offer to show that the bank, after acquiring this note, that is, the original Moore note for $5,000, as collateral security for the obligations of the witness on the stand to the Citizens' State Bank, that the Citizens' State Bank, the then holder of this original Moore note, without the knowledge or consent at that time of this witness on the stand, extended the time of payment at the request of the defendant Moore, and then subsequently took the note of the defendant direct to the Citizens' State Bank,

without the consent of the witness on the stand, and that thereupon the witness claimed to be released, and the bank released him in pursuance of that"; and in overruling the offer of the plaintiff in error as follows:

"Mr. KIEFER.—No, we do not. I want to make an offer now, if the Court please. I want to prove by the witness on the stand that when he learned of the bank having accepted the note direct from Moore, that in lieu of the one by him delivered to the bank as collateral security, the original five thousand dollar note, that he objected to the action of the bank and demanded to be released, and that the bank did release him from all except—released him personally and all his property except the Moore note, and agreed to look wholly to the Moore note for the indebtedness for which the Moore note had been given as collateral. That is what I offer to show. And to follow it up by proof of the identity of the date for which the Moore note was given as collateral security—the original Moore note, I mean.

The COURT.—That does not indicate to me when that occurred.

Mr. KIEFER.—As soon as he learned it from Mr. Moore, in 1893, of the acceptance by the bank of his, Moore's, note direct to the bank.

The COURT.—The only inference I can draw from that is that that was after the maturity of the note.

Mr. KIEFER.—It was after the maturity of the note; as soon as this witness learned of the action of the bank from Moore.

Mr. GILMAN.—We object to that, if the Court please.

(Objection sustained by the Court, and an exception allowed to plaintiff.)"

VI.

That the Court erred in denying the motion of the plaintiff in error for a peremptory instruction to the jury directing the jury to render a verdict in favor of the plaintiff for the full amount of plaintiff's claim.

VII.

That the Court erred in refusing the request of the plaintiff for the following instruction:

"Under all the law and evidence in the case the jury are instructed to return a verdict in favor of the plaintiff for the full amount of the notes pleaded in plaintiff's amended complaint, with interest from date at the amount stipulated therein, to wit, eight per cent per annum to be compounded semi-annually."

VIII.

That the Court erred in refusing to give the jury, at the request of the plaintiff in error, the following instructions:

"If the jury find from the evidence that the defendant, in making said contract with George J. Crane and F. B. Bellinger in March, 1893, for the purchase of stock in the Bellinger German Remedy Co., for which said $5,000 note was given, relied upon his own investigation of the merits of the alleged cure for the liquor, drug and tobacco habits, then no defense has been made out in

this case, and the verdict should be for the plaintiff for the full amount of the plaintiff's claim.

The defendant cannot set up the failure of Bellinger's cure for the liquor, drug and tobacco habits to work out as he expected, unless in making the contract for the purchase of stock in the Bellinger German Remedy Co. he relied wholly and entirely upon the representation of Crane and Bellinger that the said cure was a success."

IX.

That the Court erred in refusing to give the jury, at the request of the plaintiff in error, the following instruction:

"If the jury find from the evidence that the contract of F. B. Bellinger and George J. Crane for the transfer of the Bellinger remedy for the liquor, drug and tobacco habits, was made with the Bellinger German Remedy Co., a corporation, then the defendant has not made out his defense, and the verdict must be for the plaintiff for the full amount claimed."

X.

That the Court erred in refusing to give the jury, at the request of the plaintiff in error, the following instructions:

"If the jury find from the evidence that F. B. Bellinger and George J. Crane, in March, 1893, honestly believed that said Bellinger possessed a cure or remedy for liquor, drug and tobacco habits, and their experience with the use of the same led them to believe that the same was a good cure, and they honestly repre-

sented to the defendant that it was a good cure, the failure of such cure to work perfectly after long trial would be no defense to the defendant in this action.

If the jury find from the evidence that Crane and Bellinger honestly believed that they had a good and successful cure for the liquor, drug and tobacco habits in March, 1893, and in good faith, believing in said cure, organized a corporation known as the Bellinger German Remedy Co., and sold to the defendant one-fifth of the stock of said corporation for his said note for $5,000, although it eventually turned out that said cure could not be made a medical and commercial success, the failure of the same to prove a medical and commercial success would not afford any defense to the defendant, and the verdict of the jury should be for the plaintiff for the full amount sued for."

XI.

That the Court erred in giving to the jury the following instruction:

"Now, gentlemen of the jury, there is a question in the case as to which there is a conflict of testimony, and it is referred to the jury to decide what the truth about it is, whether there was knowledge on the part of the cashier, or whoever acted for the Citizens' State Bank of Council Bluffs at the time of receiving that five thousand dollar note. It is shown by uncontradicted evidence that the transaction was through Mr. Hannan, who was an officer of that bank at that time, and whose deposition has been taken in this case. Mr. Hannan will be presumed, as the result of the uncontradicted

testimony in the case, to have been authorized to act for the bank in that matter, and any knowledge or information which he had on the subject is to be imputed to his principal, the bank for which he was acting, and the jury must determine this question of whether he knew of the fact that Mr. Moore had been swindled (if in fact he was swindled) in the transaction by which the note was obtained from him. In determining that question you are to consider all the facts and circumstances attending the transaction and showing what knowledge Mr. Hannan did have in regard to the maker and the payees of the note, and in regard to their dealings, together with respect to that note and the circumstances under which the note was obtained, and determine from a consideration of the testimony whether the evidence shows that Mr. Hannan did know of enough of the transaction to have put a prudent man on inquiry before accepting the note as a purchaser of it in good faith. The bank is chargeable not only with the knowledge which Mr. Hannan actually did have, but if there was some knowledge on his part which should have been a warning to him, and would have caused a prudent business man to have made inquiry, then the bank is chargeable with all the knowledge that might have been obtained by an inquiry, and if there was a swindle practiced, and the bank, through Mr. Hannan, knew it or should have known it, then the note was equally void in the hands of that bank as in the hands of Crane and Bellinger, and if void in the hands of the Citizens' National Bank it is likewise void in the hands of the plaintiff bank."

XII.

That the Court erred in giving to the jury the following instruction:

"I charge you that if the original note given by the defendant in this case to George J. Crane was without consideration and was obtained by said Crane from the defendant by false and fraudulent representations made by said Crane or his associate Bellinger to the defendant, and that the defendant signed said note relying upon such representations and believing them to be true, then said note was invalid in the hands of Crane and Bellinger, or either of them, and they would have no right to recover from the defendant thereon. I charge you that if said Crane and Bellinger, or either of them, represented to the defendant that they or either of them owned a secret formula from which a medicine could be compounded that was a specific for and would cure the morphine, cocaine, liquor and tobacco habits, and if said representations were made for the purpose of inducing the defendant to sign said original note in order to purchase an interest in said formula, and if the defendant, relying upon said representations and believing them to be true, and so relying and believing, signed said original note, and if as a matter of fact said defendants did not own or possess any such formula, said defendants did not own or possess any such formula, or if the formula so claimed to be possessed by them was not a specific or cure for said habits, and the said Crane and Bellinger, or either of them, knew that they possessed no such formula, or

knew that any formula owned or possessed by them was not a specific or cure for said habits, then I charge you that such action on the part of Crane and Bellinger would amount to fraudulent misrepresentation, and said note would be without consideration and void in the hands of Crane and Bellinger. I charge you that if said note was obtained by said Crane and Bellinger, or either of them, from the defendant without consideration, and by false and fraudulent representations, and the Citizens' State Bank had notice or knowledge of said fraud and lack of consideration at the time said note was transferred to it, then the rights of said bank in this note would be no greater than those of Crane and Bellinger, and under such circumstances said bank could not recover thereon.

I charge you that notice or knowledge on the part of a cashier of a bank who acts for it in a transaction is, in law, notice or knowledge to the bank itself.

The plaintiff sues as the assignee of the notes in controversy and it has no other or greater rights than the assignor, the Citizens' State Bank, and if said State Bank could not recover then plaintiff cannot recover."

XIII.

That the Court erred in giving the jury the following instruction:

"I charge you that if you shall find under the instructions that I have heretofore given you that the original note was fraudulent and without consideration in its inception and that at the time of its transfer to the Citizens' State Bank this fact was known by that bank or

by its cashier who acted for it in the purchase of the same, and that the renewal notes which are the subject of the suit in this action were executed by the defendant without notice of the original fraud, if any, practiced on him, or if said renewals were obtained from the defendant by the false and fraudulent representations made by said bank, or its cashier, to the defendant, to the effect that said note had been acquired for value without notice in due course of business, then I instruct you that your verdict must be for the defendant."

XIV.

That the Court erred in giving to the jury the following instruction:

"In the progress of the trial and in the discussion of the case complaint has been made that there was a new liability created by novation. The Court instructs you that there was not any liability created by novation. A novation is a contract that requires three parties and the minds of all three must meet and be in accord so as to effect a novation. That would occur in a case in which we will say A (supposing that to represent a person) is indebted to B and B is indebted to C and they all agree that A shall become liable to C for the debt of B, and B releases A from any further obligation to him and C accepts A in the place of B and releases B from any oligation to him. That constitutes a novation. You see it requires the concord of three minds."

XV.

That the Court erred in giving to the jury the following instruction:

"I charge you that if you shall find from the evidence that said note was fraudulent and without consideration in its inception, then the burden of proof is upon the plaintiff to establish by preponderance of evidence that the Citizens' State Bank was a bona fide holder of said note and if you shall find from the evidence that the said note was fraudulent and without consideration in its inception, and shall further find that the plaintiff has not established by a preponderance of the evidence that the same was taken in due course of business without notice of such fraud, then your verdict must be for the defendant."

XVI.

That the Court erred in denying the motion of the plaintiff in error for judgment notwithstanding the verdict, and in rendering and entering judgment herein in favor of the defendant in error for costs, and that the plaintiff in error take nothing by its action.

JAMES KIEFER,
JAMES McNENY,
Attorneys for Plaintiff.

[Endorsed]: Assignment of Errors. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 22, 1906. A Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the United States Circuit Court of Appeals, in and for the Ninth Circuit.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff in Error,
vs.
J. A. MOORE,
Defendant in Error.
No. 1128.

Supersedeas Bond on Writ of Error.

Know all men by these presents, that we, the First National Bank of Council Bluffs, Iowa, plaintiff in error, as principal, and the National Surety Company of New York, a surety corporation, under the laws of the State of New York, as surety, are held and firmly bound unto J. A. Moore, defendant in error, in the sum of two hundred and fifty dollars ($250) lawful money of the United States to be paid to the said obligee, his heirs, executors, administrators and assigns, for which payment well and truly to be made, we do bind ourselves, and each of us, and each of our successors and assigns firmly by these presents.

Dated March 19, 1906.

Whereas, the above-named principal, the First National Bank of Council Bluffs, Iowa, has prosecuted a writ of error from that certain judgment entered in the United States Circuit Court for the Western District of Washington on March 5, 1906, wherein and whereby it was adjudged and decreed that the complaint and cause of action of the said First National Bank of Council

Bluffs, Iowa, should be dismissed and the plaintiff take nothing thereby, and that the above-named J. A. Moore, defendant in said cause No. 1128, should recover his costs and disbursements.

Now, the condition of this obligation is such that if the plaintiff in error shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then this obligation to be void; otherwise to be and remain in full force and virtue.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA.

By JAMES KIEFER,
Its Attorney.

NATIONAL SURETY CO. [Corporate Seal.]

By JOHN W. ROBERTS,
Res. Vice-President.

Attest: H. S. JORDAN,
Res. Asst. Sec.

The foregoing bond approved March 22d, 1906.

C. H. HANFORD,
Judge.

Copy of foregoing bond received March ——, 1906, and original may be approved by the Court without notice.

L. C. GILMAN,
M. M. LYTER,
Attorneys for Defendant.

[Endorsed]: Supersedeas Bond on Writ of Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 22, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Dep.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

FIRST NATIONAL BANK OF COUNCIL BLUFFS, IOWA,
Plaintiff,
vs.
J. A. MOORE,
Defendant.
No. 1128.

Clerk's Certificate to Transcript.

United States of America,
Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Washington, do hereby certify the foregoing one hundred and fifty-seven (157) type-written pages, numbered from 1 to 157, inclusive, to be a full, true and correct copy of the papers, records and all proceedings had in the foregoing and therein entitled cause, as the same now remain on file and of record in the office of the clerk of said Circuit Court at Seattle in said district; and that the same constitutes the return to the annexed writ of error.

I further certify that I annex hereto and transmit herewith the original citation issued in said cause.

I further certify that all of the papers, records and proceedings filed and recorded in said cause in the Circuit Court of the United States for the District of Washington prior to the passage of the act of Congress of March 2, 1905, have been duly certified to the Circuit Court of the United States for the Western District of Washington, as required by said act of Congress of March 2, 1905, dividing the State of Washington into two judicial districts.

I further certify that the cost of preparing and certifying said return to writ of error is the sum of $144.70, and that the same has been paid to me by James Kiefer, Esq., Attorney for First National Bank of Council Bluffs, Plaintiff above named, and Plaintiff in Error.

In witness whereof I have hereunto set my hand and affixed the seal of said Circuit Court, this 31st day of March, 1906.

[Seal] A. REEVES AYRES,
Clerk U. S. Circuit Court, Western District of Washington,

By H. M. Walthew,
Deputy Clerk of Said Court.

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States to the Honorable, the Judges of the Circuit Court of the United States, for the Western District of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Circuit Court before you, or some of you, between The First National Bank of Council Bluffs, Iowa, plaintiff, and plaintiff in error, and J. A. Moore, defendant, and defendant in error, a manifest error hath happened to the great damage of the said First National Bank of Council Bluffs, Iowa, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you may have the same at the city of San Francisco in the State of California, on the 16th day of April next, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and

according to the laws and customs of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, 22d day of March, 1906.

[Seal] A. REEVES AYRES,
Clerk of the United States Circuit Court for the Ninth Circuit, Western District of Washington.

By H. M. Walthew,
Deputy Clerk.

Writ allowed March 22, 1906.

C. H. HANFORD,
Judge.

Received a true copy of the foregoing writ of error for defendant in error.

Dated this —— day of March, 1906.

_____,
Clerk of the United States Circuit Court for the Ninth Circuit, Western District of Washington.

By _____,
Deputy Clerk.

Copy of within writ of error received and service of same acknowledged this 22d day of March, 1906.

L. C. GILMAN,
M. M. LYTER,
Attorneys for Defendant and Defendant in Error.

[Endorsed]: In the United States Circuit Court, for the Western District of Washington. First National Bank of Council Bluffs, Iowa, vs. J. A. Moore. Writ of

Error. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 22, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States to J. A. Moore, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 16 day of April next, pursuant to a writ of error filed in the office of the clerk of the Circuit Court of the United States for the Western District of Washington, in that certain action numbered 1128, entitled First National Bank of Council Bluffs, Iowa, plaintiff, vs. J. A. Moore, defendant, in which the said First National Bank of Council Bluffs, Iowa, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 22 day of March, 1906.

[Seal] C. H. HANFORD,

District Judge, sitting as United States Circuit Judge, Ninth Circuit, Western District of Washington.

Service of the within and foregoing citation and receipt of a copy thereof, as well as a copy of the writ of error admitted this 22d day of March, 1906.

L. C. GILMAN,
Counsel for J. A. Moore, Defendant in Error.

[Endorsed]: In the United States Circuit Court for the Western District of Washington. First National Bank of Council Bluffs, Iowa, vs. J. A. Moore. Citation. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 22, 1906. A. Reeves Ayres, Clerk. H. M. Walthew, Deputy.

[Endorsed]: No. 1323. United States Circuit Court of Appeals for the Ninth Circuit. First National Bank of Council Bluffs, Iowa, Plaintiff in Error, vs. J. A. Moore, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the Western District of Washington, Northern Division.

Filed April 4, 1906.

F. D. MONCKTON,
Clerk.